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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 379.

L. H. HYER, PETITIONER,

vs.

THE RICHMOND TRACTION COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FOURTH CIRCUIT.

PETITION FILED MAY 22, 1897.

CERTIORARI AND RETURN FILED JUNE 15, 1897.

(16,592.)

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(16,592.)

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TRANSCRIPT OF RECORD.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND
FOR THE EASTERN DISTRICT OF VIRGINIA.

L. H. Hyer, Complainant,	}	In Equity.
<i>vs.</i>		
Richmond Traction Company and others, Defendants.		

Be it remembered that heretofore, to-wit: on the 30th day of October, 1895, came L. H. Hyer, the complainant in the above-styled cause, and filed his bill of complaint against the Richmond Traction Company and others, which said bill is in the words and figures following—to-wit:

BILL OF COMPLAINT.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
(2) EASTERN DISTRICT OF VIRGINIA.

Hyer	}
<i>v.</i>	
Richmond Traction Company and others.	

(3) **ORIGINAL BILL.**

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
EASTERN DISTRICT OF VIRGINIA, IN THE
FOURTH JUDICIAL CIRCUIT.

L. H. Hyer, Plaintiff,	}
<i>vs.</i>	
The Richmond Traction Company, a corporation chartered under the laws of the State of Virginia; John W. Midendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Shield, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton, and Louis Euker, Defendants.	}

To the Honorable Judges of the Circuit Court of the
United States of the Eastern District of Virginia:

L. H. Hyer, a citizen of the State of Missouri, residing in Warrensburg, Johnson county, in the State of Missouri, brings this bill against the Richmond Traction Company, a corporation chartered under the laws of the State of Virginia, a citizen of the State of Virginia, having its residence or chief place of business in the City of Richmond, Virginia; Jno. W. Middendorf, residing in the City of Baltimore, in the State of Maryland, a citizen of the State of Maryland, and John L. Williams, John S. Williams, Everett (4) Waddey, R. Shereffs, P. B. Shield, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, and Louis Euker, residing in the City of Richmond, in the State of Virginia, and citizens of the State of Virginia, Charles T. Child, residing in the County of Hanover, in the State of Virginia, a citizen of the State of Virginia, and Edmund Pendleton, residing in the County of Henrico, in the State of Virginia, a citizen of the State of Virginia.

And thereupon your orator complains and says as follows:

That the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars (\$2,000.00); indeed vastly exceeds said sum or value.

II.

INDUCEMENT.

Your orator respectfully sheweth unto your honors, that he is by profession a civil engineer, and has for some years past been engaged in projecting and constructing street railways in various cities of the United States, being sometimes called to inspect and report upon fields for such enterprises, and again, himself calling the attention of capitalists and investors to what he considered favorable fields for investments in such directions.

For some years past your orator has had his attention more and more directed to Broad street and connecting streets in the City of Richmond, Va., as an attractive and promising field for a street railway; and, having secured the co-operation or assurance of adequate capital, he, last spring, made application to the Council of the City of Richmond for an appropriate franchise which—after repeated visits to the city, prolonged and arduous efforts, and the expenditure of a large sum, in traveling, hotel bills, counsel fees and other expenses—he succeeded in securing—(5) the sum so expended being between three thousand five hundred dollars (\$3,500.00) and four thousand dollars (\$4,000.00).

III.

RICHMOND CONDUIT CO.

This franchise, which passed both branches of the City Council, was approved by the Mayor on the 17th day of June, 1895, and was granted to your orator and his associates under the name and style of the "Richmond Conduit Railway Company." After the franchise had thus become a law, it was discovered that its terms, as originally prepared and submitted by your orator and recommended by the Committee on Streets, had been altered, without the approval of your orator, who declined to accept or to proceed under it in the form in which it was finally enacted and approved. Upon conference, however, with prominent officials of the city and members of the City Council, your orator was assured that the changes made in the paper had been made under the supposition or representation that they would be acceptable to him and that, as this proved not to be the case, amendments could and would be passed restoring the franchise to its original form; provided, your orator could and would procure the deposit by a certain date, in one of the banks of the city of Richmond, of the sum of \$10,000, upon conditions embodied in a paper to be prepared by the City Attorney. Your orator, therefore, on the 17th day of July, just one month after the ordinance had become a law, caused the deposit of \$10,000 to be made in the State Bank of Virginia, and then left the city and went North for conference with his associates and backers. He had given substantial and satisfactory guarantee, indeed precisely the guarantee required, of the good faith of himself and associates of the Richmond Conduit Railway Company and their earnest purpose to build the road; such guarantee moreover, as he was assured would induce the City Council to pass the proposed amendments to his franchise, restoring it to its original and approved form.

IV.

RICHMOND TRACTION CO.

During his visits to Richmond and conferences with Council Committees, with regard to his conduit ordinance, your orator became aware of the existence of a competing applicant before the City Council, and of the efforts of a rival and competitor for the control of the Broad street franchise, that certain parties were seeking to procure the grant of this franchise to them, under the name and style of the "Richmond Traction Company." But these par-

ties appeared to be without money or resources or influence, and did not seem likely to accomplish anything, except, perhaps, to embarrass your orator in the premises. One P. B. Sheild, an attorney at law of the city, appeared to be at the head of this movement, or at least in charge of it before the City Council and its committees; but though your orator several times saw him and his associates, he and Mr. Sheild were not introduced to each other, and, so far as your orator knows, no efforts were made on either side to open communication between these two competitors for the Broad street franchise up to the meeting of your orator and Mr. Sheild in New York, as hereinafter set out, on the 9th day August, 1895.

Indeed, prior and up to this day, your orator very naturally regarded himself and associates of the Richmond Conduit Railway Company as having altogether the inside track in the premises. His ordinance had passed both houses of the City Council and been approved by the Mayor, and though not at the time in a shape satisfactory to him, yet he had been assured and had every reason to (7) believe that it would be put in this shape; indeed, he had given the guarantee required to make this practically certain, and the Committee on Streets had actually reported or recommended the most important of the desired amendments and that without hesitation or difficulty. Thus your orator and his associates of the Richmond Conduit Railway Company appeared to be, indeed were, masters of the situation.

V.

THE ALLIANCE.

During the early part of August, 1895, your orator was in the city of New York engaged in perfecting his arrangements for prompt and vigorous action under his conduit ordinance, as soon as it should be satisfactorily amended. On the morning of the 9th of August, when your orator entered the banking house of Stewart & Co., No. 40 Wall street, who had been advising with him, with a view of aiding and backing him financially in the prosecution of his enterprise, he was informed that Mr. P. B. Sheild, above mentioned, had been brought by his broker to Stewart & Co., that he had proposed to them to aid and back him in the prosecution of his Richmond Traction Company scheme; that indeed he was at that moment in another apartment of the banking house in conference with Mr. S. H. G. Stewart, the head of the firm. During the day Mr. Stewart had several interviews with the said Sheild and your orator separately. Mr. Stewart advised

your orator to the effect that the Richmond Traction people, or those acting under that style or proposing to have that corporate name, were at his mercy ; that said Sheild had distinctly admitted this to him (Stewart) and had plead with him (Stewart) to get the promoters of the Richmond Traction scheme recognition in the organization of the Conduit Company, the said Sheild clearly and emphatically declaring that he desired to meet your orator for the purpose, if possible, of consolidating the interests of the Traction people, or those representing that interest, with those of the Conduit Company. The pleading for recognition and anxiety for a meeting was earnest and came from the Traction people and the said P. B. Sheild and associates, acting through the said P. B. Sheild, who declared that he had full power and authority in the premises to represent and speak for each and all of them. The said Stewart then advised your orator that rivalry between the Conduit Company and your orator and his associates, on the one hand, and the Traction people and the said P. B. Sheild and his associates on the other hand, and antagonism of this character, would probably result in the defeat of both their schemes, or the passage of the franchise in favor of one of the two competitors loaded with such onerous and exacting conditions that no capitalist could be induced to put money in the enterprise, and he therefore urged your orator to shake hands with said Sheild, to unite forces with him upon one of the two ordinances—the Conduit ordinance or the Traction ordinance, and thus to secure and share the fruits of victory instead of the disappointment and bitterness of defeat. Mr. Sheild and your orator, realizing the wisdom of this council, were then and there introduced by Mr. Stewart, and, after some conference, parted to meet later at your orator's hotel, having arrived at a general agreement that the promoters of the Conduit scheme, represented by your orator, and the promoters of the Traction scheme, represented by the said Sheild, cooperate and share equally in the profits of the enterprise.

VI.

THE CONTRACT.

The late rivals, now allies, met, as arranged, in your orator's room in the Grand Hotel, about 5 o'clock in the evening, and, in that room and in the lobby, freely and fully conferred. The result of this conference was embodied in a contract which took the form of a joint letter from your orator and the said Sheild to S. H. G. Stewart, herein above mentioned, which letter is in the words and figures following, to-wit :

New York, August 9th, 1895.

S. H. G. Stewart, Esq. :
40 Wall street, city.

Dear Sir :

We, the undersigned, L. H. Hyer, of Washington, D. C., and Phil. B. Shield, of Richmond, Va., have this day entered into the following agreement : That both of us being interested in the procuring of a franchise for and the construction of a street railway on Broad street, in the city of Richmond, Virginia, with collateral lines, have made the following agreement : That we hereby bind ourselves, in our own behalf and for our associates, mutually to co-operate one with the other in securing a franchise for said railway and to divide equally between us and our associates whatever may be realized from the enterprise, first deducting from said amount whatever actual expenses may have been incurred by either side, such expenses to be paid out of the first money realized from said enterprise.

It is further agreed between us that the deposit already made with the State Bank of Richmond, at Richmond, Virginia, by Mr. L. H. Hyer or his associates, is to stand and remain intact as it now is for the purpose of securing the franchise aforesaid, subject to any conditions for the withdrawal thereof made by Mr. Hyer with the depositor after the seventeenth day of August, 1895 ; and further, it is agreed that the application and franchise to be presented to the Common Council of the city of Richmond shall be that of the Richmond Traction Company, for the building of an overhead trolley railway or cable system.

(10) Among ourselves we will decide what names are proper to be used in the franchise and the policy we will use in procuring the same.

Yours very respectfully,

(Signed) L. H. HYER.

(Signed) PHIL. B. SHEILD.

It will be observed that in entering into this contract your orator was acting in behalf of himself and associates, and the said Shield in behalf of himself and associates. At the time your orator was authorized to represent, and did represent, all the parties interested in the Conduit Company's scheme, and the said Shield stated that he had power of attorney from all the parties interested in the Traction Company's scheme.

Not only does the letter above set out embody the express contract between these parties, legally unalterable by parol evidence, but, in point of fact, this contract was first written by the said Sheild; then suggestions were made by your orator, and, perhaps, by the said Sheild also; then the paper, as thus amended, was rewritten by Sheild, and, lastly, as rewritten, it was read by an acquaintance of your orator who was present, and both contracting parties, being questioned by him, not only stated that the contract was thoroughly understood by them, but each showed his thorough understanding and comprehension of it—the said Sheild stating substantially that it was an agreement providing for a consolidation of interests and equal share of profits, each party being first repaid all actual outlay and expenses; that Mr. Hyer was to withdraw his Conduit franchise, and he (Sheild) acting in behalf of himself and associates, was to substitute therefor his Traction franchise, and that Mr. Hyer was to keep the \$10,000 in Richmond until the 17th day of August, 1895.

(11)

VII.

FULFILLMENT AND NOTICE.

Clearly, then, said Sheild understood the contract between him and your orator, and your orator now states and charges that he understood it precisely as Sheild did, and not only so, but he performed his part of it in fullest measure. Said Sheild and his Traction Company associates, as will more fully appear below, have gotten all they bargained for from your orator, indeed, all they said they wanted, and it is easy to see what that was and how vital to them.

At the end of July they well knew, and no one knew better than Sheild himself, that the Conduit Company held the field, and the Traction Company had no position and no prospects. Having failed with the City Council and the Street Committee, Sheild saw that his only chance was to attach his traction bubble to the tail of the conduit kite, and to do this promptly before the bubble burst. The conduit people had the Street Committee; they had the ear of the Council, and they had \$10,000 on deposit in Richmond. If Sheild, for his traction people, could but get the conduit franchise out of the way, get the use, the benefit or the credit of their \$10,000, and also get the conduit workers, who seemed to have the ear of the Council, committed to the traction scheme, the field was won; otherwise, there was no chance. There was but one way to accomplish these ends, viz.: to embarrass as much as possi-

ble the progress of the conduit scheme, and to promise everything to its promoters if they would agree to the substitution of the Traction ordinance in place of theirs; and this way was adopted. How doubly well it succeeded, your orator is mortified now to realize.

Immediately after the contract of August 9th was executed, and at the same interview at which it was executed, (12) said Sheild expressed his fears that he would not be able to rally your orator's friends in Richmond to the hearty support of the traction scheme without some assurance to them, in addition to his mere signature to the contract, that your orator desired them actually to go to work to secure the passage of the substituted ordinance. At the request of said Sheild, your orator, therefore, endorsed, upon a draft of his Traction ordinance which he presented, a request or direction to his friends in Richmond to give it their hearty support.

Again, at this same interview, said Sheild asked your orator what names of his associates should be inserted in the Traction ordinance. He insisted that he must have your orator's name, and he also desired to use the names of one or two of his associates whom he specified. Your orator could not, at that moment, give definite instructions, but the next day he wired his friends in Richmond, whither Sheild had returned, desiring them to see him, and to have inserted in the Traction ordinance your orator's name and the names of one or two of his friends and associates, one of whom was at the time in Richmond, and was, up to that moment, at work upon his conduit scheme, but who, with your orator's entire working force, went over at once to the traction side openly and heartily, though some of them even then thought, as all now see, that this change of front was a mistake.

Yet, once more: agreeably to the contract of August 9th, the Conduit ordinance was publicly withdrawn before the Street Committee in the presence of workers from both sides, and particularly of some from the traction side said not to have been represented by Sheild in making the contract, but who are now prominent, personally and officially, in the traction enterprise and company. For a day or two subsequent to the signing of the contract, Sheild and company several times wired your orator as to sundry details of the joint enterprise, especially urging him, by (13) all means, to see that the \$10,000.00, on deposit in Richmond, should be detained there until the meeting of the Council—an indispensable service which your orator rendered, although not at the time having received the telegrams referred to. And not only so, but, being him-

self prevented by sickness from being present in Richmond, your orator's friends and associates in that city continued in good faith to work with the traction people and for the passage of their ordinance, some of them actually up to the very day the Board of Aldermen finally concurred in the ordinance as passed by the lower house.

Your orator now charges that all promoters of the traction scheme, who were interested in it at the date of the contract with Sheild, are *clearly bound* thereby. Said Sheild stated that he had power of attorney from each and every one of them; they put him forward, and he acted for them; they took the benefit, and they must yield the consideration.

But your orator is also further advised and charges that all who have come into the Traction Company since that date are likewise bound, for they, too, are benefited by the consideration your orator gave, and, if they had not full personal knowledge, as some of them undoubtedly and all along had, they certainly *had legal notice* of your orator's rights. They knew enough to put them upon inquiry. Indeed, they either knew or they deliberately refused to know anything and everything with regard to your orator's rights and interests in the joint enterprise.

VIII.

BREAKING FAITH.

Your orator is at a loss to comprehend or even fully to realize the next chapter in this history. As above intimated, after executing the agreement of August 9th, he was detained one day in New York in perfecting his preparations for vigorous prosecution of the joint enterprise, and after that in Washington by serious and continuous illness. Hearing nothing from Richmond after Sheild's return there, the telegrams above mentioned not having reached him, about the 13th of August, the day before the Council was to meet to consider the Broad-street franchise, your orator requested his associate, Wm. H. Duchay, to go at once to Richmond and find out what this silence meant. This said Duchay did, arriving in this city on the 14th, the very day of the Council meeting, and immediately interviewed Sheild, but without eliciting either explanation of his silence or satisfactory declaration as to his attitude and purposes toward your orator. While no intimation was given of a purpose to break faith with him, or to crowd him out, yet the situation was not satisfactory, and your orator was promptly so informed.

The Traction ordinance was duly passed by the Coun-

eil, and Duehay being compelled to return to Washington, Sheild promised to write him fully, but did not do so, and said Duehay wired, and your orator both wired and wrote him for explanation and information, offering also to come to Richmond if vitally necessary; but neither your orator nor Duehay received any reply. Meanwhile, his friends in Richmond wrote your orator that something was wrong, and that they could get no definite information as to what was going on.

Finally, on or about the 23d of August, certainly as soon as he was well able to travel, your orator arrived in Richmond, communicating in advance with his friends to arrange a conference with Sheild, sending him word immediately upon reaching the city as to his whereabouts, and expressing a willingness to meet any appointment he might make. Sheild at first said he was too busy to make an appointment, but came in the evening to Ford's Hotel, where your orator was putting up, bringing with him one W. F. Jenkins, who had originally been associated with (15) and represented by your orator, but who seemed then to be, and is believed now to be, arrayed with said Sheild against him.

IX.

OPEN RUPTURE AND LINES DRAWN.

The conference took place about 5 or 6 P. M., not in the hotel, but on the steps of the City Hall opposite; and in the course of the interview your orator forced said Sheild to declare himself. He then openly admitted that "he had made other arrangements;" in other words, he had dropped your orator and his associates.

It is important to note that this was the first communication your orator had received from Sheild since the execution of the contract, on August 9th; that it was the first intimation received from him, or from any one on his side, that it was not his purpose to carry out said contract in good faith, and that this intimation was given nearly ten days after the Council had passed the Traction ordinance, and passed it under the circumstances above detailed, and only three days before the Board of Aldermen concurred in this action. Repudiation of such obligations at such time and under such circumstances, struck your orator dumb with amazement, yet not quite so dumb that he did not find words to express his opinion of such treatment.

Your orator was yet far from well. He had not been able to confer with his former friends in Richmond, and

did not know to what extent they had deserted him or been bought off from him. Nor does he know this even now, though it is abundantly clear that some of them have been taken care of. As above stated, the Council had acted, and the Aldermen were evidently about to concur in their action. Your orator has been deserted by some of his friends, and had little time or opportunity for conference with others. But the crisis was upon him, and whatever was to be done must be done quickly.

(16) Sheild, however, did make one suggestion that seemed not utterly devoid of promise, and which, therefore, required delay. He stated that he would call a meeting of his associates at a given hour the next morning, Saturday, the 24th of August, and it would then be finally determined what settlement, if any, they would offer. Accordingly your orator held his hands, awaiting the event; but the meeting was not held at the appointed hour, nor at a subsequent hour to which it was said to have been postponed.

When this last faint prospect of just treatment had faded absolutely away, there appeared to be but one thing remaining to your orator, and that was to give such notice as he then could of his rights and claims; such notice as would be most likely, in the brief time intervening, to reach the unknown parties, if any, who had become interested in the Traction enterprise since the 9th of August, the date of the contract at the Grand Hotel. This your orator did, by publishing in the State newspaper on Monday, the 26th of August, the very day the Aldermen acted, a statement in the words and figures following, to-wit:

" Mr. Hyer's Charges.

DISAGREEMENT AMONGST THE TRACTION COMPANY'S PEOPLE.—THREATENS TO BRING SUIT.

Mr. L. H. Hyer, one of the interested parties of the Richmond Conduit Company, and the fully authorized attorney and agent of that company, was seen by a reporter of the State and was asked if he was interested in the present Traction Company's franchise, now before the Board of Aldermen. To which he replied that he had a contract with the Traction Company for one-half interest of their franchise, when such franchise was granted.

What is the consideration of this contract you hold?

(17) I was to cause the withdrawal of the Richmond Conduit Company's application for franchise in favor of the Traction Company, which was done in due form before the

Street Committee. There are a few other minor details, all of which have been complied with.

Is the Traction Company under contract with anyone else?

I am reliably informed they are.

What do you know of these other contracts?

One is with Stewart & Co., bankers, No. 40 Wall street, New York, who, I am informed, hold a binding proposition for one-third interest in the franchise, and I have reason to believe that an effort will be made on the part of Stewart & Co. to hold the Traction Company to this proposition. I am also informed that on the 19th of August a contract was entered into with W. F. Jenkins, the terms of which, it is said, are that he is to have about one-half interest in the franchise for his services in securing the said franchise. It has also been stated to me that the company has agreed to turn over to certain bankers of this city the greater portion of this franchise for financing the same.

What is your idea of the outcome of these complications?

I can only answer for my associates and myself. If the Board of Aldermen pass the franchise to-night, as I hope and believe they will, it is my intention to retain able counsel before leaving the city to prevent any further transaction on the part of the Traction Company, from bond or stock transfers, until they have complied with the terms of the contract.

I should infer from the above that there is lack of harmony in the Traction Company.

My impression is that all of these conflicting contracts have caused discord among the parties at interest, and I am afraid these complications will lead to litigation which (18) will prove fatal to the enterprise, which I will regret to see with my financial interests at stake.

I have just received a telegram from Stewart & Co., of 40 Wall street, New York, saying they have a binding contract, dated August 9th."

Your orator is now able to say that, before the Traction franchise became a law, this publication undoubtedly reached the parties whom it was most important to affect, with notice of his rights; for the gentleman who is now president of that company, to-wit: John S. Williams, Esq., not only read your orator's card, but answered it in the public prints by a statement which evidenced the fullest notice of his claims, while almost contemptuously denying their validity, a statement which, as it seems to your ora-

tor, not only forever closes the mouth of the Traction Company on the subject of *notice*, but well illustrates the recklessness and violence with which claims such as are set out in this bill may be characterized by young gentlemen in too hot haste to score *success* to waste time in that patient hearing and careful investigation unavoidable by him who would do *justice*. The following is the statement referred to :

MR. HYER ANSWERED.

Commenting on Mr. Hyer's statement in last evening State, Mr. John Skelton Williams said :

"I never heard of Mr. Hyer until he came out in last evening's *State* with those preposterous statements. I immediately took the matter in hand to see whether there was the slightest foundation for them, and was not long in satisfying myself that his claims could not be sustained ; that his action was based on the flimsiest assumptions, and was probably inspired by the enemies of the Traction Company, who hoped to spring this surprise last evening at a critical time, with the object of casting doubts upon (19) the plans and purposes of the Richmond Traction Company. His statements are not worthy of any attention.

"Will his threat of employing counsel to defend his rights in the matter interfere in any way with your plans ?" was asked Mr. Williams. "Not in the slightest degree," he replied. "It may really be said we have already begun our work, that is to say, the office work, the engineering work. The preparation of plans, and so forth, is already now well under way, and very soon after the Mayor attaches his name to the ordinance, and it becomes a law, the actual physical construction of the road will be at once begun, and pushed to completion much more rapidly than the time allowed in our franchise. We shall pay no more attention to Mr. Hyer than we would to some unconcerned and disinterested person who might appear on the scene now for the first time and request a gratuitous interest in our enterprise."

(From the State of August 27th, 1895.)

(20) These publications your orator followed up by serving upon every one named in the Traction Company's ordinance, as passed by both houses of the City Council and approved by the Mayor (a copy of which as published, is herewith filed, marked Exhibit "A," and prayed to be read and taken as part hereof), formal notice in words and figures following, to-wit :

Richmond, Va., September 3d, 1895.

To John W. Middendorf, John L. Williams, Everett Waddey, R. Sherreffs, P. B. Sheild, C. T. Child and W. F. Jenkins, and through them, to each and every party, who on or since the ninth day of August, 1895, has been associated with them, or with any or with either of them, in the premises.

Take notice, that L. H. Hyer, in behalf of himself and associates, claims to be entitled to a full one-half interest in the franchise recently granted by the City Council of the city of Richmond, Virginia, to Jno. W. Middendorf, John L. Williams, Everett Waddey, R. Sherreffs, P. B. Sheild, C. T. Child and W. F. Jenkins and associates, to build and operate an electric street-car line in the said city, on Broad and other streets—said interest being claimed under a contract bearing date August ninth, 1895, entered into between P. B. Sheild and associates, through P. B. Sheild, and L. H. Hyer, in behalf of himself and associates—one original of which is in the hands of said P. B. Sheild and one is in the hands of Stiles & Holliday, attorneys at law, 1014 east Main St., Richmond, Virginia, the latter being open to your inspection; and, if the rights of the said L. H. Hyer and associates are not recognized and conceded, that they intend forthwith to apply to the courts to enforce their rights in the premises.

(21) This formal notice is not intended as an implication or even admission that you have not all along been aware of the rights and claims above asserted.

L. H. HYER.

By STILES & HOLLADAY,

Attorneys.

Your orator has already stated to the court that when he entered into the contract of August 9th with Sheild and associates, he did so on behalf of himself and associates—the promoters of the Richmond Conduit Railway Company's scheme. He deems it proper to state that since that date, all his then associates, with the exception of said W. F. Jenkins, A. B. Guigon, Edmund Pendleton and Louis Euker—the last three of whom required your orator to execute a paper recognizing the said Jenkins as trustee and representative of their rights and interests in the enterprise—have made legal transfer and assignment of their rights and interests in the premises to him; so that, with the exception just above mentioned and just below considered, your orator, in his own right and be-

half, now controls, represents, embodies and respectfully presses before the court the right in law and equity to everything which said contract of August 9th assured to all the promoters of the conduit scheme, to-wit: a full one-half interest therein and thereunder. He deems it proper also to add that all his said assignors, at the date of said contract, and at the dates of their respective assignments to him, and at the date of the institution of this suit, were and that they still are, citizens of States of this Union other than the State of Virginia.

As to the rights and interests, at the date of said contract with Sheild, vested in W. F. Jenkins and W. F. Jenkins, trustee, your orator now distinctly states and charges that said rights and interests are not only comparatively insignificant, but that they have no longer any legal or valid existence, as against or in diminution of the (22) rights and interests of your orator. First, because, as he believes and charges, said Jenkins has abandoned said rights and interests and makes no claim to them. Not seeing how it was possible under the circumstances that he could make such claim, your orator, prior to the institution of this suit and with a view thereto, addressed and delivered to said Jenkins a communication in the words and figures following, to-wit:

ROBERT STILES.

ADDISON L. HOLLIDAY,

Late Judge Chancery Court of Richmond.

Law Office of

STILES & HOLLADAY,

1014 E. Main Street.

Richmond, Va., Sept. 18th, 1895.

W. F. Jenkins, Esq., City.

Dear Sir—As counsel for L. H. Hyer we write to ask whether you claim any rights of any character under the paper handed you as trustee by L. H. Hyer on the 17th day of July, 1895. If you assert any claim of any character under this paper, please furnish us with a copy of the same or name an early time and place when and where we can meet you and read the paper in question.

Yours truly,

(Signed) STILES & HOLLADAY.

To this communication your orator has received no reply; but he now goes further and charges that, even if said Jenkins should advance such claim, it would be mani-

festly inconsistent, null and void, said Jenkins being not only one of the incorporators of the Richmond Traction Company, but having thoroughly cast his lot with said Sheild and his traction people whose entire position is (23) based upon the repudiation and denial of any and all right or claim in your orator or those represented by him in the contract of August 9th.

And now, in conclusion and upon the basis of the foregoing recital of facts, your orator distinctly claims and charges, and repeats the claim and charge, that he is fairly and justly entitled to a full one-half interest in the Traction Company's enterprise and franchise, that he has been unfairly and unjustly defrauded of the same, and that he will be exposed to irreparable injury, unless the court, by its benevolent writ of injunction, shall interfere to prevent said franchise or any part thereof from being assigned, transferred or encumbered to, or in favor of, innocent parties unaffected with notice of his rights.

For as much, therefore, as your orator is remediless save in a Court of Equity where such wrongs are properly cognizable and relieveable, he prays that the Richmond Traction Company, John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Sheild, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton and Louis Euker be made parties defendant to this bill and required to answer the same, but answer under oath from each and every one of said defendants is hereby expressly waived; that, if it shall be ascertained during the progress of this cause, that the said Shield represented other persons who have not been made parties defendant to this bill, then such other persons, when their names shall be discovered, be also made parties defendant hereto and required to answer this bill, but oath to said answers and to each and every one of them is also expressly waived; that each and all of said parties defendant, their agents and servants, be enjoined and restrained from transferring or encumbering the franchise or property of the said Richmond Traction Company, or any part thereof, or any interest therein, or from issuing any stock or bonds of said company, or in any other way borrowing money for the use of said company upon its franchise or property; that your orator may (24) be decreed by this honorable court to have valid right and claim to a full one-half interest in and under said contract of August 9th; and, upon the basis of said contract, to have such right and claim to a full one half interest in the said Richmond Traction Company's franchise, enterprise, property and stock; that specific execu-

tion of said contract be decreed your orator and enforced under the power and process of the court; that all parties defendant be required and compelled by the process of the court to do and perform every act which may be requisite and necessary to the vesting of your orator's full rights in the premises; and that your orator may have such other, further, general and complete relief as may be agreeable to equity and the nature of his case; and also that a writ of subpoena issue out of and under the seal of this honorable court directed to the said defendants, the Richmond Traction Company, John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Sheild, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton and Louis Euker, commanding it and them and each of them upon a certain date therein named to be and appear in this honorable court and there to answer all and singular the premises and to abide by and perform such order and decree as may be entered by the court in the cause, but answer under oath from each and all of the said defendants is hereby waived. And your orator, as in duty bound, will ever pray, etc.

(Signed) L. H. HYER.

STILES & HOLLADAY,

Solicitors for Complainant.

(25)

EXHIBIT "A" WITH BILL.

An Ordinance to Authorize the Construction and Operation of a Street Railway Within the Limits of the City of Richmond by the Richmond Traction Company.

Be it ordained by the Council of the City of Richmond :

First. That the Richmond Traction Company, composed of John W. Middendorf, John L. Williams, Everett Waddey, Reuben Sherreffs, Philip B. Sheild, Charles T. Child and W. F. Jenkins, be, and the same is hereby permitted to construct and operate a street railway within the limits of the city, along the following routes, under and subject to the conditions and provisions hereinafter set forth: a double track in Broad street from Thirty-fourth street to Robinson street; a double track in Robinson street from Broad street southwardly to the corporate limits; a double track from Broad street southwardly to Hollywood cemetery, to be located on such streets as may be hereinafter designated by the Committee on Streets; and a single track loop on Church Hill, in Twenty-fifth, O and

Thirtieth streets, or in such other streets as may be hereafter designated by the Committee on Streets.

Second. The said Broad street routes shall be begun within ten days from the date this ordinance takes effect, in a manner satisfactory to the Committee on Streets, and shall be pushed diligently and without interruption or cessation towards conclusion; and the said company shall, within nine months from the date above-mentioned, have their cars in operation upon the said entire routes. All materials to be used and manner of construction shall be subject to the approval of the city engineer, and the work shall be begun and pushed with due diligence on the western end within ten days, and on the eastern end within (26) sixty days from the date this ordinance takes effect. Before beginning said work, and within ten days from the approval of this ordinance, the said company shall deposit with the treasurer of the city bonds issued by the city of Richmond of the face value of ten thousand dollars, or United States currency for that amount, to be held subject to the following provisions, viz.:

That should the said company fail to begin said work in a manner satisfactory to the said committee within the ten days above specified, or fail to complete the same in a manner satisfactory to said committee within the nine months above specified, then, in either event, the said bond or bonds or currency shall become and be the absolute property of the city by and with the consent of the depositor thereof, given and expressed by the deposit of the same under this ordinance. Should the said company fail to begin said work in a manner satisfactory to said committee, or should the said company fail within the said nine months to have their cars in operation upon the said entire route, or should the said company, after having begun said work, fail to prosecute the work in a proper manner and with due diligence to the satisfaction of the Committee on Streets, or should, in the judgment of the said committee, continue for ten days in such improper prosecution, after having been notified by the said committee to push the work more rapidly and satisfactorily, then each and every one of the privileges hereby granted shall cease and all the privileges hereby granted and all the tracks laid in said streets shall revert and belong to the said city, by and with the full consent of the said company, given the acceptance of this ordinance in proceeding to exercise any of the privileges herein given.

Third. The said Richmond Traction Company shall, upon each day and night, between 6 o'clock A. M. and 12

o'clock P. M., or later whenever required by the City Council, render fair service to the public upon the said routes, and shall not at any time within said hours (27) cease so to do, as to the said routes, or any part of the same, without the consent of the City Council by ordinance. As a part of the undertaking by said company to render fair service, as above mentioned, the said company is to run its cars upon the Broad-street route above described upon such schedule or schedules that some one of its cars, both in going to and returning from its different termini, shall pass each point upon the said route, between Thirty-fourth and Lombardy streets at least every five minutes; but the Committee on Streets are to have the power to require from time to time that the company shall furnish quicker service, and the service on the lateral routes shall be such as the Committee on Streets may from time to time determine. The said company also shall at all times keep its cars and tracks in proper repair and its cars in neat condition.

The said company shall start at least two cars from Thirty-fourth street and from Robinson street in each direction at 6 o'clock every morning, and from the southern end of its lateral routes. Upon complaint made at any time to said company by the Committee on Streets that such fair service is not being rendered, or that its car or cars and tracks are not in proper repair, or its cars in neat condition, the said company shall, within ten days after receipt of such notice, rectify and remove the ground, or grounds, of said complaint and fully satisfy the said committee that thereafter fair and satisfactory service will be so rendered, and that its car or cars and tracks will be kept in proper repair and its cars in neat condition, and shall equip said cars with a fender or other life-saving appliances as shall be approved by the Committee on Streets. Should the said company fail within the said ten days to rectify and remove said grounds of complaint to the satisfaction of the said committee, it shall be liable for such failure to a fine of not less than ten nor more than one hundred dollars, each day's failure to be a separate offence. Should the said company fail, unless it is in the opinion (28) of the committee temporarily prevented by some unforeseen, extraordinary and impersonal cause within said ten days so to rectify and remove said grounds of complaint, and satisfy the said committee that thereafter fair and satisfactory service will be so rendered, and that its car or cars and tracks will be kept in proper repair and its cars in neat condition, then the said committee may, if it deem proper, notify said company not to run any car or

cars upon any such part of its track or tracks as to which complaint is made until authorized by the said committee or the City Council. Should the said company, at any time after forty-eight hours from the receipt of such notice from the committee not to run its car or cars, run or operate upon the said route, or any part of the same, any one or more of its cars, it shall be liable to a fine of not less than ten nor more than one hundred dollars for each and every car so run, each day's running of any such car to be a separate offence.

Fourth. The said company, in laying the tracks upon the routes above described along said streets, shall follow the locations and grades to be designated by the City Engineer, restore all streets and pavements and regrade all earth taken up or disturbed in said construction; and shall at all times, under the supervision of the Engineer of the city, at its own expense and charge, keep the streets and pavements upon which said tracks are laid to the extent of the portion of said street between the rails of each track and between the tracks, and for two feet on each side beyond the outside of said tracks, in good and complete repair, and shall pave and repair and repave the same in such manner and with such material as the city may from time to time pave, repair and repave the remaining portion of said streets. In having such paving, repairing or repaving done the said company shall have it executed by such contractor as the city may employ to do the remaining portion of the streets, provided such contractor will agree with said company to do such work at a charge (29) or cost not in excess of what he may charge the city for the said work done on the remaining portions of said streets. All rails and other materials used in the construction, repairing and relaying of the tracks upon said route shall be such as are satisfactory to the City Engineer, and the manner of construction shall be so satisfactory. And the said company shall at all times grade the said streets to the same width, as above stated, in accordance with such grades as the Council may from time to time adopt for said streets, and shall at all times repair any portion of its road along said streets, or renew the materials thereof, whenever directed by the Committee or Streets. Should the company fail to perform any of the duties and obligations above imposed in this section for ten days after the receipt of a written notice from the City Engineer of the necessity of such performance, then the said company shall be liable to a fine of not less than ten nor more than fifty dollars, each day's failure to be a separate offence. The

City Council may forbid the running of any car or cars upon the route of said company along said streets until the requirements shall be fully complied with. The City Engineer, whenever directed by said committee, is hereby authorized, in all cases of failure to perform such duties and obligations, to have such streets paved, repaired, repaved or graded to the extent required of said company as above set forth, and said road repaired or materials renewed, and the expense thereof shall be a debt against the company recoverable as debts are now recoverable by the city of Richmond, and the said debts shall be a lien upon the tracks of said company prior to any other lien or encumbrance upon said tracks. But the said company hereby agrees that as long as any such debt shall remain due and unpaid it will not run any one or more of its cars along the said route. Should the said company, while any such debt shall remain due and unpaid, run or operate upon its said route any one or more of its said cars, it shall (30) be liable to a fine of not less than ten nor more than one hundred dollars for each and every car so run, each day's running of any such car to be a separate offence.

Fifth. The said company may operate its cars along said routes by electricity or such other motive power, except steam, as may be hereafter authorized by the City Council, but such permission to use electricity shall be subject to each and every restriction and condition heretofore imposed by the City Council upon any one or more of the street railway companies using electricity as a motive power in this city, except as herein otherwise provided; and for the failure of the said company to perform any one or more of said restrictions or conditions, it shall be liable to a fine of not less than ten nor more than one hundred dollars, each day's failure to be a separate offence. The city hereby expressly reserves the right to revoke at any time the right or permission to use electricity as a motive power, or to put any further conditions, restrictions and regulations as to the use of electricity.

Sixth. The gauge of all the tracks of said company within the corporate limits of the city of Richmond shall be the same as that of the present tracks of the Richmond City Railway Company, subject to the right of the Council hereafter to require its change.

Seventh. The privileges herein granted are given upon the further express condition that the said company shall permit any other company or companies, when authorized by the Council, to use, in whole or in part, the above

described routes or lines upon such fair and reasonable terms as may be agreed upon by the said company and each entering company; but no company shall be entitled to demand or receive the privilege unless it shall concede to the Richmond Traction Company the right to run over the tracks of such entering company, under terms determined by similar arbitration as to compensation; provided, however, that a company not using the same motive power shall not be allowed to use, on the above mentioned route, (31) more than three squares on said route, and in the event that the said companies cannot agree upon such terms, the same shall be settled by three disinterested persons, one to be selected by the Richmond Traction Company and one by the company desiring to enter, and the third by the two persons so selected, and the terms and conditions which shall be fixed and determined by said persons, or a majority of them, shall be the terms and conditions upon which said company or companies, respectively, shall use and occupy said tracks. If the said Richmond Traction Company shall, for thirty days after having been requested in writing to appoint its representative, fail to make such appointment, then the City Engineer shall make such appointment, and the person so appointed shall have the powers he would had if he had been appointed by the said company. If the said arbitrafors appointed in either of the manners above mentioned shall, after considering for sixty days the matters submitted to them, fail to arrive at and agree upon the terms and conditions to be imposed, and shall also fail to select an umpire to settle and determine said terms and conditions, then the City Engineer shall select such umpire, and the umpire so selected shall have the powers he would have had if he had been appointed by the said two arbitrators. Should either the above named company, or any company that may, under this section, enter upon and use the tracks of the above named company, fail to keep and perform each and every one of the terms as to the use of the said tracks, the said company so failing shall be liable to a fine of \$100 for such failure, each day's failure to be a separate offence; and for any such failure the City Council may forbid the running of any car or cars of the company so failing, upon any of the tracks as to which said terms apply, until said committee shall be fully satisfied that said term or terms will be fully complied with. Should the said company at any time after twelve hours from the receipt of notice of (32) such forbiddance, run or operate upon said tracks any one or more of its cars, it shall be liable to a fine of not less than ten nor more than one hundred dollars as to

each and every car so run, each day's running of any such car to be a separate offence. No company shall connect with this company except by permission of the City Council, and any company so connecting shall make with the committee satisfactory arrangements as to the transfer of passengers with the said Richmond Traction Company. For any violation of this prohibition the said Traction Company shall be liable to a fine of not less than ten nor more than five hundred dollars, each day of continuance of such connection to be a separate offence.

Eighth. The privileges herein granted said company are granted on the express condition that said company shall not, at any time hereinafter, erect, complete or occupy any power-house, either within or without the city limits, within one hundred yards of a private school, a public school of the city of Richmond, or any place of public worship in said city which shall have been established at the time such power-house shall have been begun to be erected or occupied. For any such violation of this section the said company shall be liable to a fine of not less than ten nor more than one hundred dollars, each day's violation to be a separate offence.

Ninth. The privileges herein granted to said company as to the laying and using of said tracks are given subject to and upon the condition that the said company shall, for the privilege of so using and occupying the streets of the city, and also in satisfaction of all city taxes upon the property of said company, pay annually to the Treasurer of said city an amount equal to 5 per cent. of the entire gross receipts from the freight and passenger traffic of the said company until January 1, 1900. The said sums are to be paid in semi-annual payments on the first day of February and August of each year, the first payment to be made on the first day of February, 1896, upon (33) the said gross receipts of said company for the preceding six months, and are to be accompanied by a statement of the amount of such gross receipts sworn to by the treasurer or secretary of said company. The Auditor of the city of Richmond and the chairman of the Finance Committee, or some accountant duly authorized by them, shall have the privilege to examine the books of the said company every six months in order to verify, or, if need be, correct the returns so made. The Council hereby reserves the power to charge, after the first day of January, 1900, such an annual sum as it may deem fair and proper for the use and occupancy of the streets above named. All payments to be made under this section until the first day

of January, 1900, and all payments that may be required by the Council after the last date mentioned under the power reserved in this section, shall be a lien upon any and all tracks and cars of said company laid or used on the routes above mentioned prior and superior to any other lien or encumbrance upon said tracks or cars. Should the said company fail to make any payment above mentioned within ten days after the same shall become due and payable, the said company shall be liable to a fine of not less than ten nor more than one hundred dollars, each day's failure to be a separate offence. It shall be the duty of the Auditor of the city to have said company summoned before the Police Justice of the city for the imposition of the fine or fines above mentioned. Should the said company continue for thirty days in default as to any such payment, the City Council may require and order said company to cease running any one or more of its cars upon any of the said routes, or any part thereof, until the said payment shall have been made to the city; and should the said company, after forty-eight hours from the receipt of notice of such requirement, and while so continuing in default, run or operate upon the said track any one or more of its cars, it shall be liable to a fine of not less than ten more than one hundred dollars for each and every car (34) so run, each day's running of such car to be a separate offence. Any notice required or authorized under this ordinance may be served upon the company by leaving said notice with any clerk of said company employed at the office of said company within the City of Richmond.

Tenth. The privileges herein granted are granted upon the further condition that the price of transporting passengers to or from any part of its lines or routes in Richmond shall not hereafter exceed five cents for each passenger, but six tickets are to be sold together for not more than twenty-five cents; but if the passenger, without leaving the cars, shall return to any point nearer to that from which he started than a point which he has passed, he shall pay a second fare, unless this be caused by the line of the route over which he is passing being circuitous. And said company shall place on sale, for the accommodation of children going to and from school, tickets at half rates, to be used only between the hours of 8 A. M. and 4 P. M. from Monday to Friday, inclusive; and shall also place on sale tickets at half rate, to be used between the hours of 6 and 7 A. M. from Monday to Saturday, inclusive. And also upon the condition that the Richmond Traction Company

will, without extra charge, receive any and all passengers from any company which the City Council shall hereafter require to receive without extra charge, all passengers from this company. Any person so transferred shall be carried and entitled to all the privileges and benefits to which a person paying his fare to the company to which he shall be transferred would be entitled. If the companies transferring with each other cannot agree upon satisfactory terms, then the terms are to be settled by arbitration in the manner set forth in section seven of this ordinance, and any company violating any such terms shall be liable to a fine of not less ten nor more than five hundred dollars for each violation. If any company shall refuse to give any passenger a proper transfer ticket under (35) said terms, or under the requirements of this ordinance, such company shall for any such refusal be liable to a fine of not less than ten nor more than one hundred dollars.

Eleventh. The said route or line of track, or any part of it, shall not be assigned or leased to any other person or company without the consent of the City Council, nor unless the entire said routes shall be assigned or leased at the same time and to the same assignee or lessee. Nor shall the said company allow any person or other company to use the said route, or any part thereof, without the consent of the City Council. Any lease or assignment, or any permission to use said track in violation of this section shall cause the privileges herein granted to cease, and all the privileges and all the tracks upon said streets shall revert and belong to the said city, by and with the full consent of said company, given by the acceptance of this ordinance in proceeding to exercise any of the privilege, herein given. Any purchaser, assignee or lessee shall be subject to each and every one of the provisions of this ordinance.

Twelfth. The privileges hereby granted shall continue until the first day of January, 1926, unless the same be sooner forfeited.

Thirteenth. That so much of section three, chapter forty-five of the City Ordinances, as would require this ordinance to lie until the next meeting of the branches of the City Council, be and the same is hereby repealed, so far as the same might apply to this ordinance; but all other sections of said chapter, unless otherwise herein provided, and all ordinances requiring the joint use of poles, shall apply and be binding upon the said company as to

this franchise. The privileges herein granted are given upon the further express condition that at any time a viaduct is constructed over Shockoe creek valley from Twelfth to Twenty-third street, or between any intermediate points on Broad, the company shall shift its tracks so as not to interfere with the construction and use of such viaduct, and make all necessary alterations in construction and operation as may be required by the City Engineer and Committee on Streets.

Fourteenth. Said Richmond Traction Co., and all such persons as now compose said company, or who may hereafter unite with them, are, in virtue of the authority vested in the Common Council of Richmond, pursuant to the act of the General Assembly of Virginia, passed March 20, 1860, entitled "An act to authorize the Common Council of Richmond to authorize persons to construct railroads in the streets of said city," declared to be a corporation, and are vested with all the rights and privileges conferred, or intended to be conferred, by said act on persons or companies authorized by said Council of the city of Richmond to construct railroads in the streets of said city, and are likewise bound by all the restrictions of said act.

Fifteenth. The ordinance shall be enforced from its passage.

(Signed) BEN T. AUGUST,
City Clerk.

(The foregoing being a copy of the ordinance as published).

(37) And at another day, to-wit: on the 14th day of November, at a Circuit Court of the United States, in and for the Eastern District of Virginia, held at Richmond, in said District, on the 14th day of November, 1895, the following order was entered, to-wit:

ORDER OF COURT.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA, IN THE FOURTH
(38) JUDICIAL CIRCUIT.

L. H. Hyer, Complainant,	} In Equity.
<i>vs.</i>	
Richmond Traction Company and others,	
Defendants.	

On motion of the complainant, L. H. Hyer, by coun-

sel, made in pursuance of Rule 29 of Rules of Practice for the Courts of Equity of the United States, it is ordered that leave be and the same is hereby given the said complainant to amend his bill in the above entitled cause, filed in the clerk's office of this court on the 30th day of October, 1895, by inserting:

On the first page thereof, after the words, "And thereupon your orator complains and says as follows," the following words, to-wit: "That the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars (\$2,000.00); indeed, vastly exceeds said sum or value."

On the second page thereof, at the end of the paragraph headed "Inducement," and after the words, "He succeeded in securing," the following words, to-wit: "The sum so expended being between three thousand five hundred dollars (\$3,500.00) and four thousand dollars (\$4,000.00).

And at the foot of the said bill, after the prayer for general relief and before the words, "And your orator, as in duty bound, will ever pray, &c., the following words, to-wit: "And also that a writ of subpoena issue out of and under the seal of this honorable court directed to the said defendants, the Richmond Traction Company, John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Sheild, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee; A. B. Guigon, Edmund Pendleton and Louis Euker, commanding it and them, and each of them, upon a certain date therein named, to be and appear in this honorable court and there to answer all and singular the premises, and to abide by and perform such order and decree as may be entered by the court in the cause, but answer under oath from each and all of the said defendants is hereby waived."

NATHAN GOFF,
Circuit Judge.

(40) **DEMURRER TO BILL OF COMPLAINT.**

Filed October 31st, 1895.

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, IN THE FOURTH CIRCUIT.

L. H. Hyer, Plaintiff,	}	In Equity, No. 491.
<i>vs.</i>		
Richmond Traction Company		
and others, Defendants.		

Now come the the said defendants, by James Lyons,

their attorney, the said defendants not admitting or confessing anything in said bill contained, but protesting, &c., and saving and reserving the benefit of all just exceptions thereto, demur to the said bill, and say that the same is not sufficient in law, and that the said bill is without equity, and that the said plaintiff, L. H. Hyer, has a complete and adequate remedy at law, if he be entitled to any, upon the matters and things in said bill set forth.

Wherefore said defendants pray judgment of the Court, &c., and that they may be hence dismissed, &c.

RICHMOND TRACTION COMPANY AND OTHERS, by
JAMES LYONS, their Solicitor.

Oct. 31st, 1895.

Richmond, Va.

John L. Williams, one of the defendants aforesaid, personally appeared before me, M. F. Pleasants, Clerk of U. S. Circuit Court, East. Dist., Va., in my said office, at Richmond, this 31st day of October, 1895, and, being first (41) duly sworn, makes oath and says that the foregoing demarred is not interposed for delay.

JOHN L. WILLIAMS.

Subscribed and sworn to by John L. Williams before me this 31st day of October, 1895, in my office at Richmond.

M. F. PLEASANTS,
Clerk U. S. Circuit Court.

I, James Lyons, Counsel, practicing in U. S. Circuit Court, East. Dist. of Va., do hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JAMES LYONS.

October 31st, 1895.

Richmond, Va.

(42) And at another day, to-wit: At a Circuit Court of the United States for the District aforesaid, held at Richmond, aforesaid, on the 1st day of February, 1896, the following order was entered, to-wit:

ORDER.

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN
DISTRICT OF VIRGINIA, IN THE FOURTH
JUDICIAL CIRCUIT.

L. H. Hyer, Plaintiff,

vs.

Richmond Traction Co. et als., D'f'ts.

} In Equity.

This day came the complainant, by Stiles & Holladay, his counsel, and came likewise the defendants, in both the original bill and amended and supplemental bill hereafter mentioned, by W. W. Henry and James Lyons, their counsel, and thereupon by leave of court and by consent of all parties by counsel, but without prejudice to the right of the defendants to make all proper defences, the complainant filed his amended and supplemental bill in this cause against the following persons and corporations, viz.: Richmond Traction Company, John W. Middendorf, Henry A. Parr, John L. Williams, John S. Williams, Ro. Lancaster Williams, the three last both individually and as partners doing business under the name and style of John L. Williams & Sons, Everett Waddey, R. Shirreffs, P. B. Sheild, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Louis Euker, E. B. Addison, Charles T. Child, Edmund Pendleton, William M. Habliston, and Maryland Trust Company; and thereupon the said defendants appeared in open court by W. W. Henry and James Lyons, their counsel, and waived process upon the said amended and supplemental bill; and then by leave of Court and consent of all parties, by counsel, the defendants in the respective bills filed their demurrers to the original bill in this cause, and to the said (43) amended and supplemental bill, but without waiver, on the part of the complainant of any ground of objection or exception, either in form or substance, to the said demurrers or to either of them; and then on motion of the complainant, by counsel, and by leave of Court and consent of all parties by their said counsel, the said demurrers are set down for argument before this Court at its court-room, in the City of Richmond, Virginia, during the present term.

NATHAN GOFF,
U. S. Circuit Judge.

Feb. 1st, 1896.

**AMENDED AND SUPPLEMENTAL BILL FILED IN ACCORD-
(44) ANCE WITH FOREGOING ORDER.**

Filed February 4th, 1896, in pursuance of the order entered Feb'y 1st, 1896.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

	Hyer	}
(45)	v.	
	Richmond Traction Company and others.	

To the Honorable Judges of the Circuit Court of the United States for the Eastern District of Virginia:

L. H. Hyer, a citizen of the State of Missouri, residing in Warrensburg, Johnson county, in the State of Missouri, brings this bill against the Richmond Traction Company, a corporation chartered under the laws of the State of Virginia, having its residence or chief place of business in the city of Richmond, Virginia, a citizen of the State of Virginia; John W. Middendorf and Henry A. Parr, residing (46) in the city of Baltimore, in the State of Maryland, citizens of the State of Maryland; John L. Williams, John S. Williams, Ro. Lancaster Williams, the three last named both individually and as partners doing business under the name and style of John L. Williams & Sons, Everett Waddey, R. Shereffs, P. B. Sheild, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Louis Euker and E. B. Addison, residing in the city of Richmond, in the State of Virginia, citizens of the State of Virginia; Charles T. Child, residing in the county of Hanover, in the State of Virginia, a citizen of the State of Virginia; Edmund Pendleton, residing in the county of Henrico, in the State of Virginia, a citizen of the State of Virginia; William M. Habliston, residing in the city of Petersburg, in the State of Virginia, a citizen of the State of Virginia, and the Maryland Trust Company, a corporation chartered under the laws of the State of Maryland, a citizen of the State of Maryland, having its residence or chief place of business in the city of Baltimore, Maryland.

And thereupon your orator complains and says as follows:

MATTER IN DISPUTE.

That the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars (\$2,000); indeed, vastly exceeds said sum or value.

ORIGINAL BILL AND PROCEEDINGS THEREON.

Your orator further sheweth unto your honors that on the 30th day of October, 1895, he filed his original bill in this cause against all the defendants herein above named, except Henry A. Parr, Ro. Lancaster Williams, E. B. Addison, William M. Habliston and the Maryland Trust Company, and that subpoenas were on the same day issued in the mode prescribed by law, returnable to December Rules, 1895, requiring all the defendants named in the bill to answer the allegations thereof, that, in pursuance of an order (47) made in this cause on the 14th day of November, 1895, by one of the judges of this Honorable Court, your orator immediately amended his said bill as authorized by said order, and that said original bill as amended, together with the exhibits filed therewith, is in the following words and figures, to-wit :

ORIGINAL BILL.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
EASTERN DISTRICT OF VIRGINIA, IN THE
FOURTH JUDICIAL CIRCUIT.

L. H. Hyer, Plaintiff,

vs.

The Richmond Traction Company, a corporation chartered under the laws of the State of Virginia; John W. Midendorff, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Shield, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton, and Louis Euker, Defendants.

(This original bill is here omitted, because heretofore copied at length in this record. See page 1.)

(48) EXHIBIT "A" WITH BILL.

An Ordinance to Authorize the Construction and Operation of a Street Railway Within the Limits of the City of Richmond by the Richmond Traction Company.

(This paper is here omitted, because heretofore copied at length in this record. See page 17.)

No one of the defendants to the said original bill has filed or tendered his answer thereto, but said defendants,

by their solicitor, on the 31st day of October, 1895, placed among the papers of the cause, in the clerk's office of this court, their written demurrer to the said original bill.

NEW MATTER.

SUBSCRIPTION TO STOCK AND ORGANIZATION OF COMPANY.

And now, by way of amendment and supplement to the said original bill, your orator says that he has been informed, believes and therefore charges that no books for (49) subscription to the capital stock of the said Richmond Traction Company were opened, after proper legal notice and in the mode prescribed by law; that, without such notice and in violation of the laws of Virginia, the said John L. Williams, John Skelton Williams and Ro. Lancaster Williams, comprising a firm and partnership doing business under the name and style of John L. Williams & Sons, John W. Middendorf, Everett Waddey, R. Shereffs, P. B. Sheild, W. F. Jenkins and Charles T. Child, some time in September, 1895, met together, at the banking house of the said John L. Williams & Sons, in the city of Richmond, Virginia, and went through the form of signing their names to a paper purporting to be a subscription list agreeing to take \$300,000 of the capital stock of the said Richmond Traction Company, in the following proportions, viz.: John L. William & Sons, \$280,000; John W. Middendorf, \$5,000; Everett Waddey, \$3,000; R. Shereffs, \$3,000; Phil. B. Sheild, \$3,000; Charles T. Child, \$3,000, and W. F. Jenkins, \$3,000.

Your orator has been informed, and believes and therefore charges, that prior to and at the time of the said subscription, each, all and every of the said subscribers for the capital stock of the said company had been put upon inquiry as to the rights of your orator afterwards set out in his original bill, and inquiry by them, or by either of them, would have disclosed to them and to each of them, all the facts afterwards set out in said bill; that, indeed, each, all and every of the aforesaid subscribers had actual notice and knowledge of all your orator's said claims and rights, as afterwards set out in his said original bill, at the time of and prior to their said subscriptions.

Your orator has been further informed, believes and therefore charges, that no payment whatever was actually made at the time of subscribing or at any time subsequent thereto, by any or either of the said subscribers, for the capital stock of the said company; that any pretended payment in money or by checks or otherwise made at any time (50) or in any form by said subscribers or by any or either

of them, for the said capital stock or any part thereof, or any pretended passing of a consideration of any character to the said Richmond Traction Company, from the said subscribers, or any or either of them, in payment for the said stock or any part thereof, were fictitious and were wrongful and unlawful attempts to evade the laws of this Commonwealth; and your orator has been further informed, believes and therefore charges that since the time of their said subscriptions and without any lawful or valid payment from the said subscribers, or either of them, certificates, purporting to be for fully paid-up stock of the said company, have been wrongfully and illegally issued to the aforesaid subscribers for the amounts of their respective subscriptions.

Your orator is also further informed, believes and therefore charges, that the said so-called subscribers to the stock of the said Richmond Traction Company, on the very day of their said subscriptions, without having made or even pretended to make any payment of any character therefor, and without having complied with the laws of Virginia in respect to the formation and organization of joint stock companies, proceeded to go through the form of electing the following persons as a Board of Directors of the said company, viz.: John Skelton Williams, William M. Habliston, Philip B. Sheild, Everett Waddey, John W. Middendorf, Henry A. Parr and E. B. Addison, and of electing the said John Skelton Williams as president of the said company and William M. Habliston vice-president of the said company, and of authorizing the said pretended Board of Directors to appoint a secretary and treasurer for the said company.

Your orator further charges that all the aforesaid actings and doings of the aforesaid subscribers for the stock of the Richmond Traction Company and alleged stockholders thereof were done and performed with intent to hinder, delay and defraud your orator of and from what (51) he was and is lawfully entitled to, and were and are null and void under the laws of this Commonwealth. Your orator has been further informed, and believes and therefore charges, that each of the said directors, viz.: John Skelton Williams, William M. Habliston, Philip B. Sheild, Everett Waddey, John W. Middendorf, Henry A. Parr and E. B. Addison, at the time of their election, had been put upon inquiry as to all of the above recited facts and also as to the claims and rights of your orator, as set out in his said original bill, and inquiry by them or either of them would have disclosed to them and to each of them all the said facts and all the said rights and claims of your orator;

indeed, that each, all and every of said directors, except the said E. B. Addison, at the time of their said election, had actual notice and knowledge of said facts and of said rights and claims of your orator and of the above recited illegal and wrongful actings and doings of the said subscribers to stock or alleged stockholders, and participated also in their said intent to hinder, delay and defraud your orator in the premises.

Your orator charges that the said election of each, all and every of the said directors was null and void in law; and your orator avers and charges that the said directors, with the exception of the said E. B. Addison, with a full knowledge of all the above recited facts, proceeded, on the day of their own so-called election, to appoint Everett Waddey as secretary and Ro. Lancaster Williams as treasurer of the said corporation, which two said appointments your orator charges to have been illegal and utterly null and void.

AUTHORIZATION AND EXECUTION OF MORTGAGE.

Your orator further says that he has been informed, believes and therefore charges, that on the day following the filing of his said original bill in the clerk's office of this court (viz.: on the 31st day of October, 1895), each, (52) all and every of the defendants named therein, and the Maryland Trust Company, a corporation chartered under the laws of the State of Maryland, had actual notice and knowledge of the filing of the said bill, and of each, all and every allegation, statement and charge contained therein; and, in addition to this actual knowledge, that all the said defendants to the original bill, except John W. Middendorf, had constructive notice of the filing of the said bill, its contents and the rights of your orator by the service upon them and each of them by the United States Marshal for the Eastern District of Virginia, in the said district, on the 31st day of October, 1895, of the aforesaid subpoenas requiring them to answer the said bill; that on the day last named each, all and every of the said defendants (and the said Maryland Trust Company), the individuals acting in person or by their agents, solicitors, counsel or attorneys, and the said Richmond Traction Company and the said Maryland Trust Company, by those acting as their officers, directors, agents, servants, solicitors, counsel and attorneys, read or discussed the said bill and the rights of your orator as therein set out; that the said defendants to the said original bill, including the said John W. Middendorf, by their solicitors, counsel and attorneys, prepared and placed among the papers of this cause in the

clerk's office of this honorable court on the 31st day of October, 1895, their written demurrer to the said bill; that, for the purpose of wrongfully and unlawfully depriving your orator of his said rights, they determined to hold on the 1st day of November, 1895, a meeting of such persons claiming to be stockholders of the said Richmond Traction Company, or subscribers as aforesaid for the said capital stock, as could be assembled at the office of Messrs. John L. Williams & Sons, in the city of Richmond, Va., and to have resolutions adopted by such alleged stockholders or persons claiming to be such stockholders, directing the execution of a mortgage, from the said Richmond Traction (53) Company to the said Maryland Trust Company, as trustee, conveying the franchises and all property and assets of the said Richmond Traction Company to secure the payment of five hundred bonds of one thousand dollars each, to be issued by the said last-named company, negotiated and sold by the said Maryland Trust Company and the said John L. Williams & Sons, and the proceeds to be paid over to the said Richmond Traction Company, its so-called officers and directors, and disbursed by them in such manner as to wrongfully and illegally deprive your orator of his just and legal rights in the premises; that certain of the alleged stockholders or persons claiming to be stockholders of the said Richmond Traction Company met at time and place named, and went through the form of adopting resolutions authorizing the execution of the said trust deed or mortgage, and the issue and sale of bonds of the said Richmond Traction Company and a disposition of the proceeds of the sale thereof, a copy of which resolutions will be found written out upon the face of the trust deed or mortgage, hereinafter filed as an exhibit with this bill, and are prayed to be read and treated as if here inserted in full; but your orator has been informed, believes, and therefore charges, that no regular, proper or legal notice of the time and place of the said meeting was given; that certain subscribers for the capital stock of the said company, or persons claiming to be stockholders therein, standing upon the same footing with all other stockholders or alleged subscribers to the stock, had no notice or knowledge of the time and place for the said meeting; that the said stockholders' meeting, so pretended or attempted to be held on the 1st day of November, 1895 (as then constituted), had no power to authorize and direct the execution of a mortgage or trust deed upon the franchises and assets of the Richmond Traction Company, or to adopt the aforesaid resolutions; that no person who attended the said stockholders' meeting was in contemplation

(54) of law and the statutes of Virginia, an actual *bona fide* stockholder of the said company, clothed with power or authority to exercise any of the powers or functions of a stockholder in a joint-stock company under the laws of the State of Virginia; that no pretended stockholder who attended the said meeting had paid a dollar, in money, or otherwise, upon his subscription to the capital stock of the said company; that the said meeting was held, or attempted to be held, in violation of the laws of the State of Virginia; and that the said resolutions and all proceedings had, or attempted to be had, at said meeting were therefore null and void; that even if all persons who had subscribed for the capital stock had been present at, or had notice of the said stockholders' meeting, which is denied, no resolutions authorizing the execution of the said trust deed or mortgage could have been lawfully adopted by them, as they were not lawful stockholders, and had no lawful powers and no actual rights, and were all wrongdoers, attempting to hinder, delay and defraud your orator of and from what he was and is lawfully entitled to, and for this reason, also, your orator charges that the said resolutions were and are null and void. Your orator has also been informed, believes and charges that the said stockholders, and each of them, who attended said meeting of November 1st, 1895, had before them at that time a copy of your orator's said bill, filed on the 30th day of October, 1895, or data and memoranda of its contents, or had previously read and discussed the said bill; that each, all and every of the said stockholders, prior to and at the time of the said meeting, had actual notice or knowledge of the several allegations, statements and charges contained in the said bill, and of the rights of your orator in the premises, and that said resolutions were adopted, or attempted to be adopted, with intent to hinder, delay and defraud your orator of and from what he is and was lawfully entitled to, and that the said resolutions and all proceedings (55) had thereunder are, for this reason also, wholly null and void.

In view of these facts your orator is advised and charges that each and every of the said stockholders who participated in said meeting, either in person or by proxy, made himself personally, jointly and severally liable to your orator for all loss and damage that may result to him from the adoption of the aforesaid resolutions and the proceedings had thereunder or connected therewith; and while your orator has not been able to ascertain fully who was present at the said alleged stockholders' meeting of November 1st, 1895, he has been informed, believes, and

therefore charges, that the following subscribers for the said stock were present, and participated in the said so-called stockholders' meeting, viz. : John W. Middendorf, John L. Williams & Sons, John L. Williams, John Skelton Williams, Ro. Lancaster Williams, Everett Waddey and P. B. Sheild.

Your orator further sheweth unto your honors that he has been informed, believes, and therefore charges, that immediately after the adoption of the aforesaid resolution, on the first day of November, 1895, by the so-called stockholders' meeting of the Richmond Traction Company the so-called directors of said company, on the same day and at the same place, attempted to hold a director's meeting; that said meeting was held in violation of the laws of the State of Virginia and in violation of the by-laws of said company; that, at the said meeting, the so-called directors in attendance went through the form of adopting resolutions authorizing and directing the execution of the aforesaid mortgage or trust deed, the negotiation and sale of the bonds secured thereby, and the disposition of the proceeds of the sale of said bonds; a copy of which resolutions will be found embodied in the trust deed or mortgage, hereinafter filed as an exhibit with this bill, and are now prayed to be read and treated as if here inserted in full; that said resolutions so adopted, or attempted to be (56) adopted, and all the proceedings of the said so-called directors' meeting of November 1st, 1895, were wholly illegal, null and void, and were had and adopted without lawful authority, by individuals having no power or authority to act as a board of directors for the said Richmond Traction Company, and that said resolutions were made and adopted with intent to hinder, delay and defraud your orator of and from what he was and is lawfully entitled to, and are on this account also wholly illegal, null and void.

And, while your orator has been unable to ascertain whether all the aforesaid alleged directors of the said Richmond Traction Company attended said so-called meeting of said so-called board of directors of said company, held November 1st, 1895, your orator has been informed, believes, and charges that the said John W. Middendorf, John Skelton Williams and Wm. M. Habliston did attend said so-called meeting, and your orator is advised, and therefore charges, that said meeting was not a legal and valid meeting of the board of directors of the said company, and that the individuals who attended and took part in said meeting thereby made themselves personally, jointly and severally liable to your orator for all loss and

damage which have accrued or may hereafter accrue to to him from the action of the aforesaid meetings of November 1st, 1895.

Your orator is yet further advised, and charges that such of the so-called directors as absented themselves from said so-called meeting of the board of directors of the said company, held on the first day of November, 1895, with the exception of the said E. B. Addison, did so with full knowledge of your orator's rights in the premises, and of the intent and purpose of the said meeting to hinder, delay and defraud your orator of his said rights, and so absented themselves for the purpose of enabling those in attendance to adopt the aforesaid resolutions, which were adopted; and, therefore, your orator further charges that (57) the said so-called directors who so absented themselves from said meeting of November 1, 1895, also made themselves, personally, jointly and severally liable to your orator for all loss and damage which have accrued, or may hereafter accrue to him from the action of the so-called meeting.

Your orator is not informed that the said E. B. Addison took part in the said meeting and proceedings of the so-called Board of Directors of the Richmond Traction Company, of which he has been, and, as your orator believes, still is formally a member. Indeed, your orator's information leads him to believe that the said Addison did not take such part, and was not informed of the intent of the other directors, and did not attend or participate in said so-called directors' meeting of November 1st, 1895, and, as at present advised, your orator does not include, or intend to include, the said Addison in his aforesaid charges of wrongful and unlawful conduct on the part of the said directors of the said company; but, if hereafter advised or informed that the said Addison did attend and participate in the action of the said meeting of November 1st, 1895, or otherwise participate in the proceedings of the said so-called board of directors of said company, your orator will ask leave to amend his bill so as to pray for personal relief against said E. B. Addison also.

Your orator further sheweth that, following the adoption of the two aforesaid resolutions, the said Richmond Traction Company, acting by John Skelton Williams, as president, executed to the said Maryland Trust Company, as trustee, a trust deed or mortgage (being the mortgage authorized, contemplated and directed by the said resolutions) bearing date the 1st day of November, 1895, acknowledged by the said John Skelton Williams, as president, on the 4th day of November, 1895, signed also by the said Mary-

land Trust Company, and by it acknowledged on the said 4th day of November, 1895, and recorded on the last-named day in the Clerk's Office of the Chancery Court of (58) the city of Richmond, which said mortgage or deed of trust purports to be executed by authority of the aforesaid resolutions, which are copied at large upon the face thereof, and conveys the franchises of the said Richmond Traction Company, and all of its property and assets, to the said trustee, to secure the payment of the principal and interest of the said five hundred bonds of one thousand dollars each, particularly described in said trust deed or mortgage, a copy of which is herewith filed, marked "Exhibit B," and is prayed to be taken and read as a part of this amended and supplemental bill, as if here set out at full length.

Your orator has been informed, believes, and, therefore, charges, that said trust deed or mortgage was made and executed without lawful authority, and that the same should, therefore, be declared null and void by this honorable court; that the object and purpose of the said deed, of the sale of the bonds thereby secured, and of the disposition of the proceeds of sale thereunder directed, were to deprive your orator of his just and legal rights as set out in his original bill; that said trust deed or mortgage was made and executed with intent to hinder, delay and defraud your orator of and from what he was and is lawfully entitled to receive; and that the said Maryland Trust Company had notice and knowledge of each, all and every of the facts hereinbefore set out, and especially of the fraudulent character of the said trust deed or mortgage, and of the aforesaid resolutions, and of the fraudulent intent with which each and every of them was adopted, made and executed, and that the said trust deed or mortgage should, for these reasons, also be declared null and void, and wholly annulled and set aside.

As bearing on the unlawful intent and character of the said deed, your orator now calls attention to the following marked features thereof, to-wit: that the aforesaid resolutions adopted by the so-called stockholders of the said Richmond Traction Company at their said meeting (59) held on the first day of November, 1895, purporting to authorize the execution of the said trust deed to the Maryland Trust Company (a copy of which resolutions may be found on the face of the said deed), required that each of the bonds secured thereby should contain a provision in the following words, viz:

"The holder of this bond agrees that no recourse shall be had for its payment to the individual responsibility of

any stockholder, director or officer of the mortgagor by reason of any liability whatsoever incurred by or imposed on him by virtue of any law or statute which may now or hereafter be in force."

And, not content with the aforesaid attempted exemption from personal liability (by the resolutions of the said so-called stockholders and the clause required by them to be inserted in the said bonds), the said so-called board of directors, at their meeting held on the first day of November, 1895, in the resolution adopted by such of them as were present on that occasion purporting to authorize the execution of the said mortgage of trust deed to the said Maryland Trust Company, required the insertion therein of a provision in the following words, which may also be found on the face of said instrument, viz. :

ARTICLE XI.

"No holder of any of the bonds or coupons hereby secured shall have recourse for the payment thereof to the individual responsibility of any stockholder, director or officer of the mortgagor by reason of any liability whatsoever incurred or imposed on him by virtue of any law or statute which may now or hereafter be in force."

But, while the aforesaid provisions contained in the said resolution and mortgage, attempting to exempt themselves from personal liability, serve to illustrate the intent (60) of the aforesaid so-called stockholders and directors in respect to their actings and doings in the premises, and their fear of personal responsibility therefor, yet your orator is advised and charges that these provisions are contrary to public policy, and for this reason, as well as for all other reasons hereinbefore recited, the said bonds and trust deed or mortgage are null and void in law. Let it be understood, however, that in making this charge, based upon the special features just mentioned, your orator does not intend in any way to yield his contention that the said trust deed or mortgage is fraudulent and void throughout. On the contrary, your orator again charges that the said trust deed or mortgage, in all of its parts and provisions, is fraudulent in law and in fact, and that the grantee in the said trust deed or mortgage had notice of the fraudulent intent of its immediate grantor, and that, therefore, the said trust deed or mortgage should be annulled and set aside.

Your orator is further advised and charges that whatever may be said by or in behalf of any of the defendants, except the said E. B. Addison, as to the absence of any

particular one or more of the said stockholders or directors of the said Richmond Traction Company from said meetings of November 1st, 1895, and whatever ingenious contention may be set up as to the consequent freedom from personal liability of any such absent stockholder or director for the action had and taken at said meetings or either of them, and especially for the resolutions above mentioned adopted at said meetings and the action taken pursuant thereto, there can be no doubt or question as to the liability in the premises of John W. Middendorf, John Skelton Williams, John L. Williams, Ro. Lancaster Williams, Everett Waddey, P. B. Sheild, John L. Williams & Sons and the Maryland Trust Company: not alone because said parties were present or represented at one or both of said meetings, but because they had otherwise the clearest and fullest notice of your orator's rights and claims in the premises; because some of them publicly denied, scouted, and ridiculed said rights and claims and (61) declared that they would pay no attention to the assertion of them, because all of them were specially active and influential in carrying out the scheme and plan by which your orator has been thus far cut off from any and all realization of his said rights; because the said John L. Williams & Sons and the Maryland Trust Company managed and engineered this entire scheme, and because the Maryland Trust Company, the trustee in said mortgage or deed of trust, was not only to the fullest extent informed as to the rights and claims of your orator in the premises; but, being so informed, thereafter advised, aided and abetted the determination and action of the said so-called stockholders' and directors' meetings and the adoption of each and all of the aforesaid resolutions, and sought and obtained the position and emoluments of trustee in the mortgage or trust deed of the Richmond Traction Company, prepared and executed pursuant to said resolutions. On these and other grounds your orator is advised and charges that all said last mentioned parties *i. e.*—all mentioned in this paragraph, except E. B. Addison and especially said Maryland Trust Company, should be held to the fullest extent liable to your orator for all loss and damage which have accrued and all that may hereafter accrue to him, from the action of said meetings of Nov. 1st, 1895, the adoption of said resolutions at said meetings, the execution of said mortgage or trust deed, the negotiation of the bonds secured thereby and the disposition of the proceeds of the sale of said bonds.

Your orator is further and finally advised, and therefore charges, that all the so-called stockholders and direc-

rectors of the Richmond Traction Company who are made defendants to this bill, except the said E. B. Addison, were wrongdoers conspiring together with intent to hinder, delay and defraud your orator of and from what he was and is lawfully entitled to receive, and are therefore, and for the reasons hereinbefore mentioned, personally, jointly and (62) severally liable to your orator as in the paragraph last above set out, and for all loss and damage which has accrued or may hereafter accrue to your orator from the organization of the Richmond Traction Company, the making of contracts in its name and from its debts or liabilities, if any such there be.

Yet, notwithstanding the personal liability of the said parties to him, your orator is advised and charges that he will be exposed to irreparable injury, unless the court interfere by injunction to prevent the further negotiation and sale of the bonds issued by the Richmond Traction Company and the further expenditure of the money received for such sale, and the making and execution of contracts in its name and appoint a receiver to take charge of all property and assets of the said company.

For as much, therefore, as your orator is remediless, save in a Court of Equity where such wrongs are properly cognizable and relievable, he prays that the Richmond Traction Company, John W. Middendorf, Henry A. Parr, John L. Williams, John S. Williams, Ro. Lancaster Williams, the three last named both individually and as partners doing business under the name and style of John L. Williams & Sons, Everett Waddey, R. Shereffs, P. B. Sheild, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guignon, Louis Euker, E. B. Addison, Charles T. Child, Edmund Pendleton, William M. Habliston and the Maryland Trust Company, be made parties defendant to this bill and required to answer the same, but answer under oath from each, all and every of the said defendants is hereby waived; that the relief sought and prayed for in his original bill heretofore filed in this cause may be granted to your orator, and, to that end, he here again presents and respectfully presses upon the attention and grace of the court the several prayers of his said original bill, and prays that they may be read, treated and granted as if here again fully repeated and written out; that the so-called subscription to the capital stock of the said Richmond Traction Company made as hereinabove set out, may be declared and decreed to be illegal, null and void; that the script or stock certificates issued to the several so-called subscribers to the capital stock of the said company, upon and by virtue of their so-called subscriptions, may be ordered to be delivered up,

declared null and void and cancelled; that the organization of the said Richmond Traction Company and the election of its so-called officers and board of directors, (63) upon the basis of the so-called subscriptions and stock, may be declared and decreed to be illegal and null and void, and that the same may be vacated by the decree of this Court; that the so-called stockholders' and directors' meetings of the said company, held as above set out on the 1st day of November, 1895, and all the proceedings of the said meetings may be declared to be illegal and invalid, and particularly that the resolutions adopted at the said meetings authorizing and directing the execution of the mortgage or trust deed from the said Richmond Traction Company to the said Maryland Trust Company, as trustee, conveying the franchises, property and assets of said company to secure the bonds to be issued by it, and directing the negotiation and sale of said bonds and disposition of the proceeds of such sale, which resolutions are written out upon the face of said mortgage or deed of trust, may be declared to be illegal, invalid, null and void, that for all the reasons recited in this bill, the said mortgage or trust deed may be declared to be illegal, null and void and be set aside by decree of this court; that all the bonds so secured by said mortgage or trust deed which have been negotiated and sold may be called in, and that these and all other bonds executed or issued pursuant to the resolutions aforesaid may be decreed to be delivered up and cancelled; that all the so-called stockholders and directors of the said Richmond Traction Company, except the said E. B. Addison, and particularly such of them as attended the said stockholders' and directors' meetings of November 1, 1895, which passed and adopted the resolutions aforesaid, may be declared and decreed to be wrong-doers conspiring together with intent to hinder, delay and defraud your orator of his just rights in the premises, and may be held and decreed to be personally, jointly and severally liable to your orator for all loss and damage which have accrued, or may hereafter accrue to him in consequence of the action of the said meetings of November 1st, 1895, the adoption of said resolutions at said meetings, the execution of said mortgage or trust deed, the negotiation of the funds secured thereby and the disposition of the proceeds of the sale of said bonds; that all the defendants may be required and decreed to do, perform and pay whatever may be necessary, to discharge the said Richmond Traction Company and franchise from the consequences of the organization of the said company, and from all contracts, debts and

liabilities contracted in the name of the said company, and in all respects to discharge and exonerate the said company and franchise from the payment of all of its debts, liabilities and contracts of every character whatsoever, so far as the same may be prejudicial to the rights of your orator. That the said Maryland Trust Company may be enjoined and restrained from discharging any, all and every of the acts or duties of trustee imposed upon or assumed by it under the said trust deed or mortgage, and especially from authenticating any of the said bonds intended to be secured by the said trust deed or mortgage by the signature of its president to the certificate endorsed on the said bonds, and from delivering the said bonds, or any or either of them, to the said Richmond Traction Company, its president, vice-president, officers or agents, or to any other persons acting for it or in its name, and from selling or otherwise disposing of the said bonds, or either of them, and from paying over any funds in its hands from the sale or other disposition of the said bonds, or any or either of them, to the said Richmond Traction Company, its officers, directors, agents or others, acting for it or in its name; that the said Richmond Traction Company, its officers, directors, agents, and others acting by or under its authority may be enjoined and restrained from selling or otherwise disposing of the said bonds, or any or either of them, and from paying out or otherwise disposing of the proceeds derived from the sale or other disposition of the said bonds, or any or either of them; that the said Richmond Traction Company, its officers, directors and all others acting or pur- (65) porting to act in its name may be enjoined and restrained from entering into any contract or incurring any debt or liability in the name of the said Richmond Traction Company, or exercising any of the rights, powers, functions or privileges of the Richmond Traction Company; that a receiver may be appointed pending the determination of this cause to take charge of all of the aforesaid bonds, of all the proceeds from the sale of such of them as may have been sold or otherwise disposed of, and of all the property and assets of the said Richmond Traction Company of every character and wherever situated; and that all proper inquiries may be made, accounts taken and decrees entered; and your orator further prays that he may have and be granted such other, further, general and complete relief as may be agreeable to equity and the nature of his case.

Your orator also prays that a writ of subpoena may issue out of and under the seal of this honorable court di-

rected to each, all and every of the persons and corporators hereinbefore prayed to be made parties defendant to this amended and supplemental bill, commanding them and each of them, upon a certain date named therein, to be and appear in this honorable court, and there to answer all and singular the premises and to abide by and perform such order and decree as may be entered by the court in this cause; but answer under oath from each and all of the said defendants is hereby waived.

And your orator, as in duty bound, will ever pray &c.

L. H. HYER.

STILES & HOLLADAY,
Solicitors for Complainant.

"EXHIBIT B."

"Exhibit B," with amended and supplemental bill, being a copy of the trust deed or mortgage of November 1, 1895.

(Copy.)

(66) This indenture, made this first day of November, in the year eighteen hundred and ninety-five, between the Richmond Traction Company, a corporation created by and existing under the laws of the State of Virginia, party of the first part, hereinafter called the "Mortgagor," and the Maryland Trust Company, as trustee, a corporation created by and existing under the laws of the State of Maryland, party of the second part, hereinafter called the "Trustee."

Whereas, by an Act of General Assembly of the State of Virginia, entitled "An act to authorize the Common Council of Richmond to authorize persons to construct railroads in the streets of said city," passed March 20th, 1860, and known as Chapter 214 of the Acts of Assembly of 1859-60, it is provided that the Common Council of the city of Richmond shall have the power to authorize any persons or companies to construct railroads in the streets of the city of Richmond, under such provisions, restrictions and limitations as the Council may prescribe; and that when such persons or companies are so authorized to construct such railroads the said persons or companies, with such persons as may unite with them, shall be a corporation with the powers and duties and for the time prescribed and authorized by their agreement with the said Council, subject to the general laws of the State of Virginia relating to corporations and chartered companies applicable to such

corporations and not inconsistent with said act of March 20th, 1860.

And whereas, by the said act it is further provided that any persons or companies authorized by the Council to construct such railroads may, with the consent of the County Court of Henrico County, extend their road or roads into the county of Henrico any distance not exceeding ten miles, and that they may at any time borrow money for the purpose of building, equipping or extending their roads, and may issue bonds therefor bearing interest not exceeding eight per centum per annum, and may secure (67) the same by a deed of trust or mortgage upon the whole or any portion of their property.

And whereas, by an ordinance of the Council of the city of Richmond, entitled "An ordinance to authorize the construction and operation of a street railway within the limits of the city of Richmond by the Richmond Traction Company," approved August 28th, 1895, the mortgagor was, in virtue of the authority vested in the Common Council of the city of Richmond by the act of March 20th, 1860, duly created a corporation under the name of the "Richmond Traction Company," for the purpose of constructing, equipping, maintaining and operating a line or lines of street railway in the city of Richmond and in the county of Henrico, in the State of Virginia.

And whereas, by a contract between the County Court of Henrico county and the mortgagor, dated the twenty-eighth day of October, 1895, the mortgagor was empowered to extend its road along certain streets and avenues in the county of Henrico.

And whereas, at a general meeting of the stockholders of the mortgagor, duly called and held in the city of Richmond, in the State of Virginia, on the first day of November, 1895, the following resolution was unanimously adopted, viz.:

"Whereas, in order to build, equip and extend its line or lines of street railways in the city of Richmond and county of Henrico, it is necessary for this company to borrow a sum or sums of money not exceeding five hundred thousand dollars.

"Now, therefore, be it resolved that this company do make and issue its first mortgage coupon bonds, bearing date November 1st, 1895, and payable to bearer, for the aggregate amount of five hundred thousand dollars, the same to be of the denomination of one thousand dollars each, and to be payable both as to principal and interest in gold coin of the United States of America not inferior to the present standard of weight and fineness, the princi-

(68) pal to be payable on the 1st day of November, 1925, and the interest to be payable at the rate of five per cent. per annum, semi-annually, on the first days of January and July in each year, according to the coupons to be thereto attached, and to account from November 1st, 1895, and the said bonds shall be numbered from one to five hundred, both inclusive, and shall be disposed of from time to time as the board of directors of this company shall direct, and the proceeds of sale of the same shall be applied by the board of directors to the building, equipping and extending of the lines of railway of this company now owned or hereafter to be acquired by it, but no proceeds of any of the bonds so to be issued shall be applied toward the construction, equipment or extension of any lines of railway unless the same shall be free from all encumbrances other than the lien of the mortgage securing the bonds to be issued under this resolution.

“ And be it further resolved that to secure the payment of said bonds, with the interest to accrue thereon, this company do make, execute and deliver unto the Maryland Trust Company, a corporation incorporated under the laws of the State of Maryland, having its principal office in the city of Baltimore, a mortgage, in such form and containing such provisions as may be hereafter approved by the board of directors of this company, conveying and creating a first lien on all the property, real and personal, of this company, now owned or hereafter to be acquired by it, and the income thereof, and on all the corporate rights and franchises of the company, in trust for the equal benefit and security of the holders of said bonds, without preference, priority or distinction between them as to lien or otherwise, but with the proviso that the lien of the mortgage on any line of railway hereafter to be acquired by this company, and the income therefrom shall be subsequent and postponed to the lien of any mortgage that may be hereafter executed by this company on such after acquired railway to secure bonds of this company, the proceeds of which are to be applied to the payment for such railway to be hereafter acquired.

“ And be it further resolved, that the president and secretary of the company be and they are hereby authorized and empowered for and on behalf of this company to affix its corporate seal to each of said bonds, and to sign the same as such president and secretary, and, when so executed, to deliver the same to the trustee, with the interest coupons thereto attached, and the coupons shall be authenticated by the signature of the treasurer of this company engraved thereon, and his engraved signature

thereto shall be regarded and treated in all respects as equivalent to his manual signing of the same, and the bonds so to be issued and the coupons to be thereto attached shall be substantially in the forms following, and shall, after certification by the trustee, be from time to time delivered by the trustee to the president or vice-president of this company upon his written receipt therefor, accompanied by a copy of a resolution of the Board of Directors of this company authorizing him to receive from and receipt to the trustee for the same, to-wit:

FORM OF BOND.

No. —

\$1,000

United States of America,

State of Virginia.

Richmond Traction Company.

First Mortgage Five Per Cent. Gold Bond.

The Richmond Traction Company, a corporation created by the laws of the State of Virginia, for value received, promises to pay to bearer, if not registered, or to registered owner hereof, if registered, one thousand dollars in lawful gold coin of the United States of America, not inferior to the present standard of weight and fineness, at the office of the Maryland Trust Company, in the city of Baltimore, Maryland, or at the banking house of John L. Williams & Sons, in the city of Richmond, as the holder hereof may elect, on the 1st day of November, 1925, on the surrender of this bond, with interest thereon, in the meantime, at the rate of five (5) per centum per annum, payable semi-annually, in like gold coin, at said office, or at said banking house, on the first days of January and July in each year, on presentation and surrender of the interest coupons hereto attached, when respectively due, without any deduction for any national, State or municipal taxes which the Richmond Traction Company may be by law required to pay.

This bond is one of a series of first mortgage bonds, each of like tenor, date and amount, numbered from one to five hundred, both inclusive, for the aggregate sum of five hundred thousand dollars, issued by the authority of the stockholders of the Richmond Traction Company, and secured by a first mortgage dated November 1st, 1895, executed by the company under such authority, and by it delivered to the Maryland Trust Company as trustee for the holders of said bonds, and conveying all the property,

railways, rights and franchises of this company, and the income to be derived therefrom, as fully set forth in said mortgage.

If default shall be made in the payment of any instalment of interest on any of said bonds, the principal hereof may be made due and payable in the manner provided in said mortgage, and this bond is subject to purchase by the trustee for the sinking fund at the maturity of any interest coupon after July 1st, 1900, on the payment to the holder of a sum equal to the principal and accrued interest, and a premium of five per cent. on the principal sum of the bond as provided in the mortgage.

The holder of this bond agrees that no recourse shall be had for its payment to the individual responsibility of any stockholder, director or officer of the mortgagor by reason of any liability whatsoever incurred by or imposed (71) on him by virtue of any law or statute which may now or hereafter be in force.

This bond may, at the option of the holder hereof, be registered at the office of the trustee in the city of Baltimore, and such registration shall be endorsed on the back hereof, and thereafter, unless at any time registered as payable to bearer, the principal of this bond will be payable only to the last registered holder or transferee thereof, but such registration shall not affect the negotiability of the coupons by delivery merely.

This bond shall not become valid or obligatory until authenticated by the signature of the president of the trustee to the certificate indorsed thereon.

In witness whereof, the Richmond Traction Company has caused these presents to be sealed with its corporate seal, authenticated by the signature of the president, and attested by its secretary this 1st day of November, 1895.

RICHMOND TRACTION COMPANY.

By _____,
President.

Attest :

_____,
Secretary.

(FORM OF COUPON.)

No. _____

\$25.

The Richmond Traction Company will pay to bearer on the first day of _____, twenty-five dollars in gold coin of the United States of America, at the office of

the Maryland Trust Company, in Baltimore, Maryland, or at the banking house of John L. Williams & Sons, in Richmond, Virginia, as the holder hereof may elect, being six months' interest on its first mortgage thirty years gold bond, No. ———, for one thousand dollars.

_____,
Treasurer.

(72) (FORM OF TRUSTEE'S CERTIFICATE.)

The Maryland Trust Company hereby certifies that this bond is one of the series of bonds mentioned in the within mortgage.

MARYLAND TRUST COMPANY,

Trustee.

By _____,

President.

And, whereas, at a meeting of the board of directors of the mortgagor, held after due notice in the city of Richmond, on the 1st day of November, 1895, the form of this mortgage having been then and there submitted by the president to the meeting and entered upon the minutes of the board, it was

“Resolved, That the form of mortgage from this company to the Maryland Trust Company as trustee, submitted by the president, is hereby approved, and that said mortgage be made and executed by the officers of this company on its behalf, and with its corporate seal thereto affixed, and be duly acknowledged and delivered to the trustee and recorded according to law, and that the officers of this company do and cause to be done all acts necessary, proper or expedient to carry into effect the objects and purposes expressed in this resolution and in the resolution of the stockholders of this company relating to said mortgage, and the bonds to be thereby secured, to perfect the issue of the bonds and the mortgage to secure the same.”

Now this indenture witnesseth that the mortgagor, for the purpose of securing the payment of the principal and interest of the said bonds when and as the same shall become due and payable, according to the tenor and effect thereof, and in consideration of the premises and the sum of one dollar to it paid by the trustee at the time of the execution and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned,

(73) transferred and conveyed, and does hereby grant, bargain and sell, assign, transfer and convey unto the trustee and its successor or successors in the trust hereby created, and its or their assigns forever, all of the property, rights and franchises now owned, or that may be during the existence of this mortgage acquired by the mortgagor of every kind, nature or description, and all of the tolls, fares and revenues that may be derived therefrom, and including all of its real and personal property, with the improvements and appurtenances, and all of its rights of way and lines of railway and tracks now or to be hereafter laid down, constructed, used or operated by it, with the branches and extensions thereof, and the switches and turnouts, lying and being in the city of Richmond and county of Henrico, in the State of Virginia, and all of its equipments, rolling-stock, poles, wires, dynamos, motors, engines, plant and machinery, whether electric or otherwise, and the tolls, fares and revenues to be derived from any of said properties, and all of the privileges and franchises of the mortgagor, but the lien of this mortgage on any line of railways hereafter to be acquired by this company and the income therefrom shall be subsequent and postponed to the lien of any mortgage that may be hereafter executed by this company on such after-acquired railway, to secure bonds of this company, the proceeds of which are to be applied to the payment for such railway to be hereafter acquired.

To have and to hold all of the real and personal property and revenues, and the rights, privileges and franchises hereby conveyed to the trustee, its successor or successors in the trust hereby created, and its and their assigns, forever, to their sole use and benefit, but in trust, nevertheless, for the equal *pro-rata* benefit and security of all parties who may be or become holders of any of the bonds or coupons so issued, or to be issued, without any preference, priority or distinction between them as to the lien of any (74) of said bonds over others by reason of priority in time of issue or negotiation, or otherwise, and so that each and all of the said bonds shall be equally secured hereby, but subject to the terms and conditions following; that is to say:

ARTICLE I.

Provided, that if the mortgagor shall pay the principal of all of the said bonds and the interest thereon according to the tenor of said bonds and the coupons thereto attached, without deduction for national, state or municipal taxes or assessments, and shall perform all of the stipu-

lations of this mortgage, then these presents shall be void, and the rights, estates and interests hereby granted shall cease and determine. And, until default shall be made by the mortgagor in any of the premises, it shall be entitled to remain in possession and enjoyment of all of the property hereby granted in trust and take the income thereof and exercise all of its franchises as if this mortgage had not been made.

ARTICLE II.

The principal and interest of said bonds are payable without deduction for any tax now or hereafter imposed thereon, which the mortgagor is or may be required to retain therefrom, and the mortgagor hereby covenants that it will pay and discharge at their maturity the principal and interest of said bonds, and that it will pay and discharge when and as the same shall become due all taxes and other charges of every kind which may be payable, or become a lien upon any of the property, income or franchises hereby conveyed, or intended to be covered by the lien of these presents, and the said mortgagor does also covenant that it has done no act to encumber any of the property or franchises hereby conveyed, and that it will not suffer or permit any lien to be acquired thereon superior to the lien hereby created. In case the mortgagor (75) fails to pay such taxes the trustee may, in its discretion, pay the same, and the amount paid therefor shall be a lien on the mortgaged property prior to that of said bonds and coupons, and shall be payable on demand to the trustee, with lawful interest, but shall not be a charge against the bonds or bondholders personally.

ARTICLE III.

The mortgagor hereby covenants to do everything necessary to maintain the mortgaged property in good condition and to permit no waste thereof and to keep all of the mortgaged property and chattels, which may be insurable, fully insured against loss or damage by fire for the benefit of the holders of said bonds, and to deliver the policies to the trustee to whom the insurance shall be made payable, any avails of insurance to be paid to the trustee and to become subject to the lien of this mortgage, as fully as if now owned by the mortgagor and expressly described herein, and to be applied to the restoration of the property damaged or destroyed, which shall also be subject to the lien hereof.

In case the mortgagor fails to effect or renew the insurance, the trustee may, in its discretion, effect the same,

and the premiums paid therefor shall be a lien on the mortgaged property prior to that of said bonds and coupons and shall be payable on demand to the trustee, with lawful interest, but shall not be a charge against the bonds or bondholders personally.

ARTICLE IV.

None of the said bonds shall be valid obligations of the mortgagor without the certificate thereon of the trustee, authenticating the same, nor shall any coupon be valid unless the bond to which the same may belong shall be so certified, and in the execution of the coupons annexed to (76) the bonds secured by this mortgage, the signature of the treasurer of the mortgagor engraved thereon shall be regarded and treated as in all respects equivalent to the manual signing of the coupons by him.

ARTICLE V.

And the mortgagor hereby covenants with the trustee for and on behalf of the bondholders entitled to the benefit of the security hereby provided that the mortgagor will at any and all times hereafter, on demand, make, do and execute all such other and reasonable assurances, acts, deeds and things as in the opinion of competent counsel may be necessary or proper to effectuate the lien and security hereby intended to be created for the benefit of the holders of the bonds hereby secured, and especially to render subject to the lien of this mortgage, any and all property hereafter acquired by the mortgagor during the existence of this mortgage, but with the proviso relative to after-acquired railways and the income thereof hereinbefore mentioned, relating to mortgages to be given thereon.

ARTICLE VI.

The mortgagor covenants that at least once in each year, and whenever else requested to do so, it will render to the trustee a full and true statement of its financial condition, verified by the oaths of its president and treasurer or secretary, and that at any time during the existence of this mortgage its property, books and accounts may be examined by any person or persons designated by the trustee for that purpose.

ARTICLE VII.

In case of any default for ninety days in the payment of the interest on any of the said bonds or in the payment of any taxes or charges on the mortgaged property or in

(77) any stipulation of this mortgage or in the said bonds on the part of the mortgagor to be performed, then the holders of one-fourth in amount of said bonds then outstanding may elect to declare the whole principal sum of the bonds to be due and payable, and may, by an instrument in writing, under their hands, instruct the trustee to so declare said principal; whereupon the whole principal sum of each and all of said bonds then outstanding shall forthwith be due and payable, notwithstanding that the time limited therein for the payment thereof may not then have elapsed; and in the event of any sale by the trustee under the powers conferred by this mortgage of any of the property, rights and franchises hereby mortgaged, the whole principal sum of each and all of the bonds secured hereby shall forthwith be due and payable, notwithstanding that the time limited therein for their payment may not then have expired.

ARTICLE VIII.

If the mortgagor shall at any time hereafter, after demand made, make default for ninety days to pay the interest on any of the bonds hereby secured as the same shall become due and payable, or shall make default for any period after the maturity of said bonds to pay the principal sum of any of them, or shall make default for ninety days in the payment of any taxes or charges on the mortgaged property, or in any stipulation of this mortgage or in said bonds, on the part of the mortgagor to be performed, then in any of said cases it shall be the duty of the trustee upon the written request of the holders of one-fourth in amount of the bonds hereby secured and then outstanding to enter upon and take possession, with such force as may be necessary, of all and singular the above granted property, rights, and franchises, and to direct, operate and manage the same, and from time to time to make thereto all needful repairs (78) and replacements, and such alterations and improvements as may be deemed judicious, and to receive the passenger fares, revenues and income thereof and appropriate the net income and proceeds derived therefrom, after deducting the expenses of this trust in full, including reasonable attorney's and counsel fees, to the payment in full, without giving preference, priority or distinction of one bond over another—first, of the interest due on said bonds, and secondly, of the principal of all the said bonds issued upon the security of these presents and then outstanding, in full, if the said income and proceeds shall be sufficient, but if not, then *pro rata*; and the trustee in any of said cases, if so required in writing by the holders of one-fourth

in amount of the bonds issued upon the security of these presents then outstanding, shall, after or without entering upon or taking such possession of said property and premises, set all and singular the mortgaged estate and property, real and personal, and the rights, franchises and premises hereby mortgaged to the highest bidder at public sale in the city of Richmond, having first given notice of the time, place and terms of such intended sale by publication to be made twice in each week in one daily newspaper published in the city of Baltimore, in one daily newspaper published in the city of New York, and in two daily newspapers published in the city of Richmond, for a period of not less than four weeks preceding the sale, and thereupon, upon payment of the whole purchase money by the purchaser or purchasers to the trustee, the trustee shall grant and convey all said property, franchises and premises, with the appurtenances, unto such purchaser or purchasers, freed from all and every the trusts hereby created, and shall appropriate the purchase money, after deducting the expenses of such sale, including reasonable attorney's and counsel fees, to the payment without preference, priority or distinction of one bond over another, first of the interest due on the said bonds, and secondly, (79) of the principal of all the said bonds issued upon the security of these presents and then outstanding, in full, if the said purchase money shall be sufficient, but if not, then *pro rata*, and the surplus, if any, remaining in the hands of the trustee, after the payment of all said costs, charges and expenses and after the payment in full of all the interest and principal of all the said bonds, as aforesaid, shall be paid by the trustee to the mortgagor or those lawfully claiming under it. It is further understood and agreed that the trustee may, in its discretion, adjourn any sale from time to time by giving at the time of making such adjournment reasonable notice of the time to which the same is adjourned, and, if so adjourning, may make sale without further notice at the time to which the sale may be so adjourned, and at the place mentioned in the advertisement of the sale as originally published, but the provisions contained in this article and the rights reserved to the trustee hereunder are cumulative and additional to all other remedies allowed by law for the foreclosure of mortgages, and the trustee shall, upon the written request of the holders of one-fourth in amount of all outstanding and unpaid bonds secured hereby, and upon being properly indemnified, and whenever entitled so to do by the terms of this mortgage, institute proceedings, in law or in equity, to foreclose the same.

ARTICLE IX.

It is further agreed that at the sale, if any such there should be, of the property, rights and franchises, or any part thereof, hereby conveyed, to be made by virtue of the foregoing power of sale, or by judicial authority, for the purpose of enforcing the lien of these presents, the trustee may, with the assent in writing of the holders of at least one-half of the bonds hereby secured and then outstanding, personally or by agent or attorney, bid for, and if the same be attainable at the price hereinafter mentioned, (80) purchase the property so offered for sale, on behalf of all holders of the bonds secured by this instrument then outstanding, in proportion to the respective interests of such holders in the said bonds and the coupons thereto belonging, provided, however, that nothing herein contained shall authorize the trustee to bid on behalf of the holders of said bonds a sum exceeding the whole amount of the bonds then outstanding, with the interest accrued thereon, and the expenses of such sale for the entire property then held upon the trusts of this mortgage, or to bid a sum reasonably proportionate thereto for any part of the said property. And it is hereby further agreed that the bonds and overdue coupons aforesaid shall be received in payment of so much of the purchase money of any property sold at such sale as may be awarded on the bonds and coupons so to be received to the holders thereof in the distribution of the sale fund.

ARTICLE X.

The mortgagor hereby irrevocably waives the benefit and advantages of all stay, exemption, extension, valuation and appraisement laws now existing, or hereafter to be passed by the United States or the State of Virginia, which may or might prevent, postpone, hinder or delay the exercise the right of the trustee to enter upon, operate or sell the mortgaged premises or any part thereof, or to commence or continue any action or proceeding in regard thereto, or to the exercise of any powers, rights, privileges and remedies of the trustee, or of any of the bondholders under the provisions hereof, and the mortgagor hereby expressly covenants and agrees not to claim, set up or take the benefit or advantage of any such laws.

(81)

ARTICLE XI.

No holder of any of the bonds or coupons hereby secured shall have recourse for the payment thereof to the

individual responsibility of any stockholder, director or officer of the mortgagor by reason of any liability whatsoever incurred or imposed on him by virtue of any law or statute which may now or hereafter be in force.

ARTICLE XII.

It shall be lawful for the mortgagor by and with the consent in writing of the trustee, at any time or times hereafter to exchange for other property, or to sell, lease or otherwise dispose of any part of the mortgaged property and premises, free and clear from the lien or encumbrance hereof, and to convey the same without liability on the part of the purchaser to see to the application of the purchase money, and the proceeds of such sales or dispositions shall be paid to the trustee, and shall, under its direction and with its approval, be reinvested by the mortgagor, and the property in which the same shall be reinvested, as well as any property that may be acquired in exchange as aforesaid, by the mortgagor, shall be subject to all the trusts hereby declared, including the power to sell, lease or exchange or otherwise dispose of herein reserved in regard to the property in this indenture described, and, if it shall be so required, the same shall be conveyed in mortgage by the mortgagor to the trustee, to be so held.

And the mortgagor shall also be entitled, with the consent in writing of the trustee, to make such alterations in the routes of any part of its lines of railway as will promote its interest and any routes substituted or constructed in the lieu of a route abandoned, shall become and be subject to the lien and all the trusts and provisions of this mortgage, as fully as though the same were herein specifically conveyed and the route so abandoned shall be released by the trustee from the lien of these presents.

ARTICLE XIII.

The trustee may be removed by written instrument, to be executed in duplicate under the hands of the majority in amount of the holders of all the bonds then outstanding, one of the duplicates to be delivered to the mortgagor and the other thereof to the trustee, and the removal of the trustee shall take effect upon the appointment and acceptance of its successor. In case of a vacancy in the office of trustee hereunder from any cause whatsoever, the board of directors of the mortgagor shall have power to fill the vacancy by the appointment of a solvent trust company, doing business in the city of Baltimore, to act as

and be trustee hereunder, and, in case said board of directors do not make the said appointment within thirty days after the delivery of said duplicates as aforesaid, or the occurrence of any vacancy, the holders of a majority in amount of all the bonds at such time outstanding may, in writing, designate a solvent trust company, doing business as aforesaid, to act as and be trustee hereunder, and thereupon and in either case such new trustee shall, when appointed as aforesaid, be vested with all of the estate, right, title, interest, powers and duties hereby conferred on and vested in the trustee hereby appointed, without any conveyance of the same, as fully to all intents and purposes as if the new trustee had been hereby appointed and constituted, and thereupon it shall be the duty of the mortgagor to execute under its corporate seal a certificate, or other proper instrument, and to acknowledge and deliver the same, to be recorded in the proper records in the State of Virginia, showing the appointment of the new trustee, however it may be selected, and the mortgagor hereby covenants with the holders of said bonds that it will execute, acknowledge and deliver said (83) certificate or other proper instrument. And it shall also be the duty of the trustee to assign, transfer and deliver up to the new trustee all of the trust property in its hands, which it hereby covenants to do.

ARTICLE XIV.

The mortgagor agrees to keep at the office of the trustee proper books for the purpose of registration and transfer of the bonds hereby secured, and any bond may, at the option of the holder thereof, be registered at the office of the trustee, in the city of Baltimore, and such registration shall be indorsed thereon, and thereafter, unless registered as payable to bearer, the principal of the bond will be payable only to the last registered holder or transferee thereof, but such registration shall not affect the negotiability of the coupons by delivery merely. The reasonable charges of the trustee for registration of the bonds shall be borne by the mortgagor.

ARTICLE XV.

It is expressly agreed that the trusts created by this instrument are accepted upon the express condition that the trustee shall not incur any liability or responsibility whatever otherwise than for its own wilful default or misconduct; nor shall the trustee become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or accrue to the property and premises

hereby conveyed, or which shall be held by the trustee under the provisions of this mortgage at any time; nor shall the trustee be in any way responsible for the consequences of any breach on the part of the mortgagor of the covenants herein contained, nor of any act of the mortgagor; nor shall the trustee be held liable for any act, default or misconduct of any agent or persons employed by it, unless chargeable with gross negligence in the selection or continuance of their employment; nor shall the trustee be considered as required to take any action hereunder unless and until requested so to do by the persons having the right to invoke its action by the terms of this mortgage, accompanied by a deposit with the trustee of the bonds held by such persons, and by proper indemnity to the trustee for any liability, expense or outlay to be incurred by it.

And it is also understood that the trustee shall be entitled to be reimbursed all proper outlays of charges or expenses by it incurred in the discharge of the trust hereby created, and to receive a reasonable compensation for any duties rendered or performed in the discharge of the same, which compensation and disbursements shall constitute a lien on the hereby mortgaged property prior to that of the bonds secured by these presents, but shall be no charge against the bonds or bondholders personally.

ARTICLE XVI.

The word "Mortgagor," whenever used in this instrument, shall be construed to mean the party of the first part, its successors or assigns, unless such meaning would be unreasonable, and, in like manner, the word "Trustee," wherever used in this instrument, shall be construed to mean the trustee, its successor, or successors, in the trust, unless such meaning would be unreasonable.

ARTICLE XVII.

To provide a sinking fund for the redemption of said bonds, the mortgagor shall annually, accounting from January 1st, 1900, set aside from its income and earnings not less than one and one-quarter per cent. of the aggregate principal of all of the bonds theretofore issued by the mortgagor, secured by this mortgage, and shall pay over the same to the trustee in equal semi-annual instalments on the first days of January and July, the first payment to be made July 1st, 1900. The sums so to be paid to the trustee, as well as any other moneys that may come into its hands on account of such sinking fund, shall be applied by it as promptly as practicable to the purchase of

bonds secured by this mortgage, provided the same can be bought at not more than one hundred and five per cent. and interest, but in case of the inability of the trustee to make such purchase, the trustee shall, at least thirty days before the next instalment of interest matures, draw by lot from the total number of the said bonds then outstanding, the numbers of so many bonds as the funds in its hands will suffice to purchase at the price above stated; and it shall thereupon give notice of its intention to purchase the bonds so drawn by advertisement, specifying the numbers thereof, and the time of purchase, published in a daily newspaper in the city of Baltimore and a daily newspaper in the city of Richmond twice a week for at least four weeks previous to such time of purchase, which shall be the day on which the then next instalment of interest shall be due, and on and after the day thus designated, upon the presentation and surrender at its office of such bonds, with all the unpaid coupons attached, the trustee shall purchase the same by paying to the holders thereof the coupons due at the time designated for the purchase, and a sum equal to one hundred and five per cent. of the principal; but from the day so fixed for purchase, interest upon each of said bonds so drawn and advertised shall cease to be paid by the mortgagor to the holder, unless there shall be a failure to purchase the same by the trustee upon presentation as aforesaid, on the terms hereinbefore specified, but after the purchase by the trustee of any bonds for the sinking fund, the mortgagor shall, in addition to said annual sum of not less than one and one-quarter per cent. of the bonds theretofore issued, continue to pay for the sinking fund the interest coupons on said bonds to the trustee until the maturity of the principal of the bonds, and, on purchase thereof for the sinking fund, the trustee shall mark the bonds, "purchased for the sinking (S6) fund," and the same shall not again be issued or transferred.

And this indenture further witnesseth that the Richmond Traction Company, the mortgagor aforesaid, doth hereby appoint its President, John Skelton Williams, as its attorney, for it and in its name and on its behalf, to acknowledge this indenture to be the act and deed of the said Richmond Traction Company before any officer authorized by the laws of the Commonwealth of Virginia to take said acknowledgement to the end that these presents may be duly recorded.

And the Maryland Trust Company, the trustee aforesaid, doth hereby appoint its President, J. Wilcox Brown, as its attorney, for it and in its name and on its behalf, to

acknowledge this indenture to be the act and deed of the said Maryland Trust Company, as trustee, before any officer authorized by the laws of the Commonwealth of Virginia to take said acknowledgment to the end that these presents may be duly recorded.

In witness whereof the parties hereto have hereunto signed their respective names by their presidents and affixed their respective corporate seals, and have caused these presents to be attested by the signatures of their respective secretaries the day and year the first aforesaid.

RICHMOND TRACTION COMPANY.

By JOHN SKELTON WILLIAMS, President.

Attest :

[Corporate Seal.] EVERETT WADDEY,
Secretary.

(87) Witness as to the Corporate Seal of the Richmond Traction Company and its signature by its president :

JAMES LYONS, JR.

GEO. WHITELOCK.

MARYLAND TRUST COMPANY.

By J. WILCOX BROWN, President.

Attest :

[Corporate Seal.] J. BERNARD SCOTT,
Secretary.

Witnesses as to the Corporate Seal of the Maryland Trust Company and its signature by its president :

GEO. WHITELOCK.

FELIX R. SULLIVAN.

STATE OF VIRGINIA. }
City of Richmond, } To-wit :

I, James Lyons, Jr., a notary public in and for the city of Richmond, in the State of Virginia, do hereby certify that John Skelton Williams, the President of the Richmond Traction Company, whose name is signed to the foregoing writing, bearing date on the first day of November, 1895, and who is named as attorney in the power of attorney contained therein to acknowledge the same on behalf of the said Richmond Traction Company, by virtue of the power and authority vested in him as President of the said company, and on him conferred by said power of

attorney, has acknowledged the same before me in my city aforesaid as the act and deed of said company. And I also certify that Everett Waddey, Secretary of said company, whose name is also signed thereto as secretary, has also acknowledged the same before me in my city aforesaid as the act and deed of said company, and that the (88) corporate seal of said company, which is affixed thereto, is the corporate seal of the Richmond Traction Company.

Given under my hand and seal of office this first day of November, 1895.

{ Notarial
Seal. }

JAMES LYONS, JR.,
Notary Public in and for the
City of Richmond.

Tax on seal,
Notarial fee,

\$1.00
1 00

\$2.00

Paid.

JAMES LYONS, JR., N. P.

STATE OF MARYLAND, } To-wit:
City of Baltimore, }

I, Felix R. Sullivan, a notary public in and for the city of Baltimore, in the State of Maryland, do hereby certify that J. Wilcox Brown, the President of the Maryland Trust Company, whose name is signed to the foregoing writing, bearing date on the first day of November, 1895, and who is named as attorney in the power of attorney contained therein, to acknowledge the same on behalf of the said Maryland Trust Company, by virtue of the power and authority vested in him as president of the said company, and on him conferred by said power of attorney, has acknowledged the same before me in my city aforesaid to be the act and deed of the said Maryland Trust Company.

Given under my hand and seal of office this fourth day of November, 1895.

{ Notarial
Seal. }

FELIX R. SULLIVAN,
Notary Public.

CITY OF RICHMOND, } To-wit:

In the office of the Court of Chancery for the said city, 4th day of November, 1895, this deed was presented, and,

with the certificates annexed, admitted to record at half-past eight o'clock P. M.

Teste :

CHAS. W. GODDIN, Clerk.

A copy—Teste :

CHAS. W. GODDIN, Clerk.

DEMURRER TO AMENDED AND SUPPLEMENTAL BILL.

(89)

Filed February 4th, 1896.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA, AT RICHMOND.

L. H. Hyer,

vs.

Richmond Traction Company et als. } In Equity.

The demurrer of the defendants to the amended and supplemental bill of complaint of the said L. H. Hyer.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint to be true in manner and form, as the said L. H. Hyer hath therein set forth and alleged, demur to the said bill, and say that the same is not sufficient in law; and for causes of demurrer the said defendants show :

I. That it appears by the said L. H. Hyer's own showing on the face of his said bill that under the Constitution and laws of the United States this honorable court, on the equity side thereof, hath no jurisdiction of, and can take no cognizance of, the matters and things in said bill set forth; but that the said matters and things alleged and set forth by the said L. H. Hyer in said bill are, under the Constitution and laws of the United States, within the sole and exclusive jurisdiction of the courts of law which have jurisdiction of the parties and the subject matter, and are competent to afford a plain, adequate and complete relief.

II. That it appears on the face of the said bill that this honorable court hath no jurisdiction of the said bill, because the citizenship of the complainant and the several parties defendant, respectively, as shown by the said bill, bar the jurisdiction of this honorable court, as declared by (90) the Judiciary act and the acts of Congress in amendment thereof in such case made and provided.

III. That it appears on the face of the bill that the

complainant has a plain, complete and adequate remedy at law, if any he has.

IV. That the contract and agreement set forth in said bill as the sole cause of action of the said complainant is against public policy, and null and void; and no court of equity will enforce the same.

V. That the said bill of complaint is multifarious and defective for misjoinder of the other defendants with the defendant, P. B. Sheild, against whom alone the said L. H. Hyer has any cause of action, according to his own showing.

VI. That the said bill is demurrable upon its face, for the non-joinder as parties thereto of Wm. H. Duehay and the other associates of the said L. H. Hyer, who, according to his own showing, are jointly interested with said Hyer in the alleged cause of action set forth in his said bill.

VII. The plaintiff seeks to set aside the organization of the Richmond Traction Company, and deny its powers as a corporation, which can only be accomplished by a writ of *quo warranto* filed in the Circuit Court of Richmond, Virginia, by the Attorney-General of the State.

VIII. The plaintiff claims one-half of the franchise and profits of the Richmond Traction Company, and at the same time prays this court to enjoin the exercise of the said franchise by the said company, and thus seeks to prevent the making of the profits he claims a share in.

IX. The plaintiff seeks to have decreed him one-half of the franchise of the Richmond Traction Company, while he shows that he has never subscribed for one-half of its stock, or offered to so subscribe.

(91) Wherefore, and for divers other good causes of demurrer, appearing on the face of said bill, these defendants demur thereto, and they pray the judgment of this honorable court, whether they shall be compelled to make any answer to said bill; and they humbly pray to be hence dismissed, with their costs in this behalf sustained.

JOHN L. WILLIAMS,
JOHN L. WILLIAMS & SONS,
RICHMOND TRACTION COMPANY
AND OTHERS,

Defendant,
by W. W. HENRY and JAMES LYONS,
their Solicitors.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law and should be sustained.

W. W. HENRY,
JAMES LYONS,
of Counsel for the Defts.

UNITED STATES OF AMERICA. }
Eastern District of Virginia, } To-wit :

John L. Williams, Wm. M. Habliston and R. Lancaster Williams, being duly sworn, make oath and say that they are defendants in this cause and that the foregoing demurrer is not interposed for delay.

JOHN L. WILLIAMS,
W. M. HABLSTON,
R. LANCASTER WILLIAMS.

Subscribed and sworn to before me this 4th day of February, 1896, in my office at Richmond, Virginia, in said district.

McLAIN PLEASANTS,
U. S. Commissioner,
East. District of Virginia.

(92) And at another day, to-wit: At a Circuit Court as aforesaid, held as aforesaid, on the 11th day of February, 1896, the following order was entered, to-wit :

ORDER.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

L. H. Hyer
vs. } In Equity.
Richmond Traction Co. et als. }

On the motion of the defendants, by counsel, it is ordered that this cause be set down for argument, upon the original and amended and supplemental bills in this cause and the demurrers thereto, on Wednesday, the 1st day of April, 1896, at the court-room in the city of Richmond, Virginia.

NATHAN GOFF,
U. S. Circuit Judge.

(93) And at another day, to-wit: At a Circuit Court as foresaid, held as aforesaid, on the 6th day of April, 1896, the following order was duly entered of record, to-wit:

ORDER.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
EASTERN DISTRICT OF VIRGINIA.

L. H. Hyer

vs.

Richmond Traction Company et als. }

This cause came on this day to be heard on the petition of L. H. Hyer, complainant herein, this day tendered, asking for leave to amend the original, the amended and supplemental bills, heretofore filed in this cause, and was argued by counsel, the plaintiff being represented by Stiles & Holladay, and the defendant by W. W. Henry and James Lyons; on consideration whereof it is hereby ordered that said petition be filed and that the complainant have leave to amend the said bills, in the particulars set out in his said petition, which is hereby done.

It is further ordered that on the 6th day of May, 1896, in the United States Circuit Court room at Richmond, Va., at 10 o'clock A. M. of that day, the court will hear parties hereto on such matters relating to the cause as may then be properly considered.

NATHAN GOFF,

U. S. Circuit Judge.

April 6th, 1896.

(94) Complainant's petition, referred to in the foregoing order of April 6th, 1896, is in the words and figures following, to-wit:

PETITION.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

L. H. Hyer, Plaintiff,

vs.

Richmond Traction Company } In Equity.
et als., Defendants. }

To the Honorable Judges of the Circuit Court of the United States for the Eastern District of Virginia.

Your petitioner, L. H. Hyer, the complainant in the

equity cause now depending in this honorable court, under the short style stated above, respectfully represents that he desires to amend his original bill and his amended and supplemental bill, filed in the above styled cause, in the following manner, viz.:

1. That part of the original bill filed by your petitioner, which states the citizenship and residence of the parties plaintiff and defendant, is in the following words, to-wit:

"To the Honorable Judges of the Circuit Court of the United States for the Eastern District of Virginia:

L. H. Hyer, a citizen of the State of Missouri, residing in Warrensburg, Johnson county, in the State of Missouri, brings his bill against the Richmond Traction Company, a corporation chartered under the laws of the State of Virginia, a citizen of the State of Virginia, having its residence or chief place of business in the City of Richmond, Virginia; Jno. W. Middendorf, residing in the City of Baltimore, in the State of Maryland, a citizen of the State of Maryland, and John L. Williams, John S. Williams, Everett Wadley, R. Shereffs, P. B. Shield, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, and Louis Euker, residing in the City of Richmond, in the State of Virginia, and citizens of the State of Virginia, Charles T. Child, residing in the County of Hanover, in the State of Virginia, a citizen of the State of Virginia, and Edmund Pendleton, residing in the County of Henrico, in the State of (95) Virginia, a citizen of the State of Virginia."

It will be observed that while your petitioner stated that all of the named defendants, save John W. Middendorf, are citizens of the State of Virginia and gave the name of the city or county in the State of Virginia in which each of the said defendants resides, your petitioner omitted to state that the said city of Richmond, county of Henrico and county of Hanover, are each and all situated within the Eastern District of Virginia. Your petitioner therefore desires to add the following words at the end of the above paragraph, copied from his original bill in this cause, viz. : (96) "And the said city of Richmond, in the State of Virginia, county of Hanover, in the State of Virginia and county of Henrico, in the State of Virginia, being situated in the Eastern District of Virginia"—or other apt words stating that fact.

2. Your petitioner desires to amend sub-divisions III, IV, V, VI, VII, VIII of his original bill filed in this cause by striking out certain words, figures and clauses and para-

graphs therein, and adding certain other words, figures, clauses and paragraphs in lieu thereof, so that said above-named sub-divisions, when the same shall have been thus amended, shall read as follows, viz. :

(97)

III.

RICHMOND CONDUIT CO.

This franchise, which passed both branches of the City Council, was approved by the Mayor on the 17th day of June, 1895, and was granted to your orator and his associates under the name and style of the "Richmond Conduit Railway Company." After the franchise had thus become a law, it was discovered that its terms, as originally prepared and submitted by your orator and recommended by the Committee on Streets, had been altered, without the approval of your orator, who declined to accept or to proceed under it in the form in which it was finally enacted and approved. Upon open conference before the Committee on Streets of the City Council, your orator was assured that the changes made in the paper had been made under the supposition or representation that they would be acceptable to him and that, as this proved not to be the case, amendments could and would be passed restoring the franchise to its original form; provided, your orator could and would procure the deposit by a certain date, in one of the banks of the city of Richmond, of the sum of \$10,000, upon conditions embodied in a paper to be prepared by the City Attorney. Your orator, therefore, on the 17th day of July, just one month after the ordinance had become a law, caused the deposit of \$10,000 to be made in the State Bank of Virginia, and then left the city and went North for conference with his associates and backers. He had given substantial and satisfactory guarantee, indeed precisely the guarantee required, of the good faith of himself and associates of the Richmond Conduit Railway Company and their earnest purpose to build the road; such guarantee moreover, as he was assured would induce the City Council to pass the proposed amendments to his franchise, restoring it to its original and approved form.

IV.

RICHMOND TRACTION CO.

During his visits to Richmond and conferences with Council Committees, with regard to his conduit ordinance, your orator became aware that certain parties were seeking to procure the grant of this franchise to them, under the

name and style of the "Richmond Traction Company." But these parties appeared to be without money or resources, and did not seem likely to accomplish anything. One P. B. Sheild, an attorney at law of the city, appeared to be at the head of this movement, or at least in charge of it before the City Council and its committees; but though your orator several times saw him and his associates, he and Mr. Sheild were never introduced to each other, and, so far as your orator knows, no efforts were made on either side to open communication up to the meeting of your orator and Mr. Sheild in New York, as hereinafter set out, on (98) the 9th day August, 1895.

Your orator's ordinance had passed both houses of the City Council and been approved by the Mayor, and though not at the time in a shape satisfactory to him, yet he had been assured and had every reason to believe that it would be put in this shape; indeed, he had given the guarantee required to make this practically certain, and the Committee on Streets had actually reported or recommended the most important of the desired amendments and that without hesitation or difficulty.

V.

MEETING WITH SHEILD.

During the early part of August, 1895, your orator was in the city of New York engaged in perfecting his arrangements for prompt and vigorous action under his conduit ordinance, as soon as it should be satisfactorily amended. On the morning of the 9th of August, when your orator entered the banking house of Stewart & Co., No. 40 Wall street, who had been advising with him, with a view of aiding and backing him financially in the prosecution of his enterprise, he was informed that Mr. P. B. Sheild, above mentioned, had been brought by his broker to Stewart & Co., that he had proposed to them to aid and back him in the prosecution of his Richmond Traction Company scheme; that indeed he was at that moment in another apartment of the banking house in conference with Mr. S. H. G. Stewart, the head of the firm. During the day Mr. Stewart had several interviews with the said Sheild and your orator separately. Mr. Stewart advised your orator that said Sheild had plead with him (Stewart) to get the promoters of the Richmond Traction scheme recognition in the organization of the Conduit Company, the said Sheild clearly and emphatically declaring that he desired to meet your orator for the purpose, if possible, of consolidating the interests of the Trac-

tion people, or those representing that interest, with those of the Conduit Company. The pleading for recognition and anxiety for a meeting was earnest and came from the Traction people and the said P. B. Sheild and associates, acting through the said P. B. Sheild, who declared that he had full power and authority in the premises to represent and speak for each and all of them. The said Stewart then advised your orator to shake hands with said Sheild and to unite with him upon one of the two ordinances—the Conduit or the Traction ordinance. Mr. Sheild and your orator, realizing the wisdom of this council, were then and there introduced by Mr. Stewart, and, after some conference, parted to meet later at your orator's hotel, having arrived at a general agreement that the promoters of the Conduit scheme, represented by your orator, and the promoters of the Traction scheme, represented by the said Sheild, would co-operate and share equally in the ownership, control and profits of the enterprise.

VI.

THE CONTRACT.

The said Sheild and your orator met, as arranged, in your orator's room in the Grand Hotel, about 5 o'clock in the evening, and, in that room and in the lobby, freely and fully conferred. The result of this conference was embodied in a contract which took the form of a joint letter from your orator and the said Sheild to S. H. G. Stewart, herein above mentioned, which letter is in the words and figures following, to-wit:

New York, August 9th, 1895.

S. H. G. Stewart, Esq.:

40 Wall street, city.

Dear Sir:

We, the undersigned, L. H. Hyer, of Washington, D. C., and Phil. B. Shield, of Richmond, Va., have this day entered into the following agreement: That both of us being interested in the procuring of a franchise for and the construction of a street railway on Broad street, in the city of Richmond, Virginia, with collateral lines, have made the following agreement: That we hereby bind ourselves, in our own behalf and for our associates, mutually to co-operate one with the other in securing a franchise for said railway and to divide equally between us and our associates whatever may be realized from the enterprise, first deducting from said amount whatever actual expenses

may have been incurred by either side, such expenses to be paid out of the first money realized from said enterprise.

It is further agreed between us that the deposit already made with the State Bank of Richmond, at Richmond, Virginia, by Mr. L. H. Hyer or his associates, is to stand and remain intact as it now is for the purpose of securing the franchise aforesaid, subject to any conditions for the withdrawal thereof made by Mr. Hyer with the depositor after the seventeenth day of August, 1895; and further, it is agreed that the application and franchise to be presented to the Common Council of the city of Richmond shall be that of the Richmond Traction Company, for the building of an overhead trolley railway or cable system.

Among ourselves we will decide what names are proper to be used in the franchise and the policy we will use in procuring the same.

Yours very respectfully,

(Signed) L. H. HYER.

(Signed) PHIL. B. SHEILD.

(100) It will be observed that in entering into this contract your orator was acting in behalf of himself and associates, and the said Sheild in behalf of himself and associates. At the time your orator was authorized to represent, and did represent, all the parties interested in the Conduit Company's scheme, and the said Sheild stated that he had power of attorney from all the parties interested in the Traction Company's scheme, and he, the said Sheild, did actually represent them.

Not only does the letter above set out embody the express contract between these parties, legally unalterable by parol evidence, but, in point of fact, this contract was first written by the said Sheild; then suggestions were made by your orator, and, perhaps, by the said Sheild also; then the paper, as thus amended, was rewritten by Sheild, and, lastly, as rewritten, it was read by an acquaintance of your orator who was present, and both contracting parties, being questioned by him, not only stated that the contract was thoroughly understood by them, but each showed his thorough understanding and comprehension of it—the said Sheild stating substantially that it was an agreement providing for a consolidation of interests, each party to have equal ownership and control in the enterprise and an equal share of profits, but each party to be first repaid all actual outlay and expenses.

Mr. Hyer agreed that the Traction ordinance should

take the place of his Conduit franchise. A candid statement and explanation of this action was to be made before the Street Committee or the Council of the city of Richmond, and Sheild, acting in behalf of himself and his former associates, and also in behalf of your orator and his associates, was to apply to and secure from the Council of the city of Richmond the franchise set out in the said contract of August 9th, 1895, and your orator was to keep the \$10,000.00 in Richmond until the 17th day of August, 1895, but subject to the conditions set out in the said contract.

VII.

FULFILLMENT AND NOTICE.

Clearly, then, said Sheild understood the contract between him and your orator, and your orator now states and charges that he understood it precisely as Sheild did, and not only so, but your orator performed his part of it in the fullest measure. Said Sheild and his Traction Company associates have gotten all they bargained for from your orator; indeed, all they said they wanted, and it is easy to see what that was, and how vital to them.

(101) The Conduit people had already been granted a franchise by the City Council for a street railway on Broad street, with collateral lines, and they had \$10,000 on deposit, upon a basis satisfactory to the Street Committee, which was an assurance of the financial standing of your orator and his associates.

At this same interview, said Sheild asked your orator what names of his associates should be inserted in the Traction ordinance. He insisted that he must have your orator's name, and he also desired to use the names of one or two of your orator's associates whom he specified. Your orator could not, at that moment, give definite instructions, but the next day he wired his friends in Richmond, whither Sheild had returned, desiring them to see him, and to have inserted in the Traction ordinance your orator's name and the names of two of his friends and associates who were specified. For a day or two subsequent to the signing of said contract of August 9th, 1895, said Sheild and his associates several times wired your orator as to sundry details of the joint enterprise, especially urging him, by all means, to see that the \$10,000.00, on deposit in Richmond, should be detained there until the meeting of the Council—an indispensable service which your orator rendered, although not at the time having received the telegrams referred to. And not only so, but

your orator and his associates openly, publicly and fully carried out and performed each, all and every of the promises and covenants of your orator, in behalf of himself and associates, contained in said contract of August 9th, 1895.

And your orator here takes occasion to state that he applied for and obtained leave of court to amend this, his original bill, by emphasizing the openness, publicity and fairness with which said contract was carried into effect before the City Council and its committees; not because he considered his said bill, fairly construed, as being defective in this regard, but because it contained some loose and careless expressions which might be attempted to be twisted into an admission that something other than proper and legal influences and the utmost candor and publicity was intended or practiced in the making and carrying out of the said contract of August 9, 1895.

Your orator here and now states and charges, not only that no such impression was intended to be conveyed by the bill, but that nothing approximating to it in fact occurred. On the contrary, the entire history of the Broad street franchise before the City Council and its committees was a matter of the utmost publicity. The original Conduit Railway franchise of your orator had been fully considered and discussed before the Council and by the business community, and the proposed amendments of it were publicly offered, considered and adopted before the committee on streets, and then printed; and when the Traction franchise was applied for in place of the Conduit franchise, this also was openly done before the same committee; the (102) existence and substance of the contract of City, August 9th, being generally and fully known by the Council of Richmond, the committee on streets and the public generally, and in no way concealed or suppressed, and it being also well and thoroughly understood that the Conduit people and the Traction people had gotten together, upon the basis of this latter franchise, with the understanding that the two sides should have equal right and representation in the new company.

Your orator now charges that all promoters of the Traction scheme, who were interested in it at the date of the contract with Sheild, are *clearly bound* thereby. Said Sheild stated that he had power of attorney from each and every one of them; they put him forward, and he acted for them; they took the benefit, and they must yield the consideration.

But your orator is also further advised and charges that all who have come into the Traction Company since that date are likewise bound, for they, too, are benefited by

the consideration your orator gave, and, if they had not full personal knowledge, as some of them undoubtedly and all along had, they certainly *had legal notice* of your orator's rights. They knew enough to put them upon inquiry. Indeed, they either knew or they deliberately refused to know anything and everything with regard to your orator's rights and interests in the joint enterprise.

VIII.

BREAKING FAITH.

Your orator is at a loss to comprehend or even fully to realize the next chapter in this history. As above intimated, after executing the agreement of August 9th, he was detained one day in New York in perfecting his preparations for vigorous prosecution of the joint enterprise, and after that in Washington by serious and continuous illness. Hearing nothing from Richmond after Sheild's return there, the telegrams above mentioned not having reached him, about the 13th of August, the day before the Council was to meet to consider the Broadstreet franchise, your orator requested his associate, Wm. H. Duehay, to go at once to Richmond and find out what this silence meant. This said Duehay did, arriving in this city on the 14th, the very day of the Council meeting, and immediately interviewed Sheild, but without eliciting either explanation of his silence or satisfactory declaration as to his attitude and purposes toward your orator. While no intimation was given of a purpose to break faith with him, or to crowd him out, yet the situation was not satisfactory, and your orator was promptly so informed.

The Traction ordinance was duly passed by the Council, and Duehay being compelled to return to Washington, Sheild promised to write him fully, but did not do so, and said Duehay wired, and your orator both wired and wrote him for explanation and information, offering also to come (103) to Richmond if vitally necessary; but neither your orator nor Duehay received any reply. Meanwhile, his friends in Richmond wrote your orator that something was wrong, and that they could get no definite information as to what was going on.

Finally, on or about the 23d of August, certainly as soon as he was well able to travel, your orator arrived in Richmond, communicating in advance with his friends to arrange a conference with Sheild, sending him word immediately upon reaching the city as to his whereabouts, and expressing a willingness to meet any appointment he might make. Sheild at first said he was too busy to make

an appointment, but came in the evening to Ford's Hotel, where your orator was putting up, bringing with him one W. F. Jenkins, who had originally been associated with and represented by your orator, but who seemed then to be, and is believed now to be, arrayed with said Sheild against him.

(104) 3. Your orator desires to further amend his said original bill, near its conclusion, by inserting, just before the paragraph charging his exposure to irreparable injury, two brief paragraphs in the following words and figures, to-wit:

Your orator further avers and charges that the said Phil. B. Sheild is utterly and hopelessly insolvent, and that nothing could be made out of him by a judgment at law, or a decree for the payment of money.

Your orator further avers and charges that it is within the power of the defendants to specifically carry out and perform the said contract of August 9, 1895, according to its true meaning and intent as hereinbefore set out.

4. Your orator also desires to so amend his amended and supplemental bill filed in this cause, as to make his original bill, copied upon the face of the said amended and supplemental bill, read as the said original bill will read after it shall have been amended in the manner hereinbefore set out.

5. Your orator desires further to amend his said amended and supplemental bill by adding, immediately after the second paragraph on page 37 of the said bill as printed and filed, a new paragraph in the following words, viz:

And your orator now further and distinctly charges that said subscriptions were made without his knowledge, without notice to him of said meetings, or of said subscriptions; without any opportunity to him to subscribe to the capital stock of said Richmond Traction Company, with the design of excluding him from any opportunity to subscribe for any part of the said capital stock, and with the purpose of excluding him from any participation in the stock of said company, or its organization, or the determination of its policy.

(105) 6. Your orator desires further to amend his said amended and supplemental bill by adding, immediately after the first paragraph on page 46 of the said bill, as printed and filed, five new paragraphs in the following words and figures, viz:

Your orator is further advised and charges that the said mortgage or trust deed from the said Richmond Traction Company to the said Maryland Trust Company, as trustee, was made and executed in plain violation of the provisions of Section 1232 of the Code of Virginia, Edition 1887, which is in the following words and figures, to wit:

“Sec. 1232. Power to borrow money.—No company, unless expressly authorized by its charter, shall borrow money until there shall be paid up and expended or appropriated the whole amount of capital stock subscribed, with the exception only of losses by delinquent or insolvent stockholders. But the president and directors may borrow an amount not exceeding that part of the capital stock which is unsubscribed, and may issue certificates for the money so borrowed, and may make such certificates convertible, within a prescribed time, into stock of the company, at the pleasure of the holder.”

The said Richmond Traction Company claims to have been created by an ordinance of the Council of the City of Richmond, approved on the 28th day of August, 1895, a copy of which was filed with your orator's original bill in this cause, marked “Exhibit A with Bill,” which ordinance was passed pursuant to an Act of the General Assembly of Virginia, passed March 20th, 1860, entitled—“An act to authorize the Common Council of Richmond (106) to authorize persons to construct railroads in the streets of said city.” See Acts of Assembly of Virginia, 1859-'60, Chapter 214. But your orator is advised, and therefore charges, that such last mentioned act is unconstitutional and void so far as it undertakes to delegate to the City Council of the city of Richmond the authority to prescribe and define the powers and duties of the Richmond Traction Company; and your orator is also advised and charges that all the powers attempted to be conferred by the said act, on companies to be formed under it, save and except the power to construct railroads in the streets of said city are void, because they are not embraced or expressed within the title of said act, as required by Sec. 16, Article IV. of the Constitution of Virginia, in force at the time of the passage of the said act, which said section of the Constitution of Virginia is in the following words and figures, to-wit:

“No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived or amended by reference to its title, but the act revived or section amended shall be re-enacted and published at length.”

Your orator therefore charges that the said Richmond Traction Company was not expressly authorized by its charter to borrow money, and that the whole amount of its subscribed capital stock had not been paid up and expended or appropriated with the exception of losses by delinquent or insolvent stockholders when the foregoing trust deed or mortgage was executed. On the contrary, your orator avers that the entire capital stock of said company was subscribed for by John L. Williams & Sons and their associates, as herein stated, and that no part of said capital stock has been paid, but the whole amount thereof still remains unpaid. And your orator avers and charges that in such circumstances the said Richmond Traction Company was prohibited by law from borrowing money or executing any deed of trust or mortgage to secure the same.

(107) Your petitioner respectfully represents that he desires and asks leave to amend his original and amended and supplemental bills filed in this cause, as above set out, for the purpose of emphasizing the openness, publicity and fairness with which the contract of August 9, 1895, between the said L. H. Hyer and Phil. B. Sheild, a copy of which was filed with the original bill, was carried into effect before the City Council and its committees; not because he considered his said bills fairly construed as being defective in this regard, but because they contained some loose and careless expressions which might be attempted to be twisted into an admission that something other than proper and legal influences and the utmost candor and publicity was intended or practiced in the making and carrying out of the said contract of August 9, 1895.

Your petitioner here and now respectfully represents and avers, not only that no such impression was intended to be conveyed by the said bills, but that nothing approximating to it in fact occurred.

On the contrary, the entire history of the Broad street franchise before the City Council and its committees was a matter of the utmost publicity. The original Conduit Railway franchise of your orator had been fully considered and discussed before the Council and by the business community, and the proposed amendments of it were publicly offered, considered and adopted before the Committee on Streets, and then printed; and, when the Traction franchise was applied for in place of the Conduit franchise, this was also openly done before the same committee; the existence and substance of the contract of city, August 9th, being generally and fully known by the Council of Richmond, the Committee on Streets and the public generally, and in no way concealed or suppressed, and it being also

well and thoroughly understood, that the Conduit people and the Traction people had gotten together, upon the basis of this latter franchise, with the understanding that the two sides should have equal right and representation in the new company.

(108) Your petitioner further represents that he has recently been informed, and upon investigation has ascertained, that the said Phil. B. Sheild was, on the 30th day of October, 1895, and still is hopelessly insolvent. This fact has an important bearing upon the realization of the rights of your petitioner, and is reason why he is without remedy save in a Court of Equity. Your orator, therefore, wishes to charge and prove the insolvency of the said Phil. B. Sheild.

Your petitioner further represents that he intended by the language of his original bill to aver and charge that it is within the power of the defendants specifically to carry out and perform the said contract of August 9th, 1895, according to its true meaning and intent, as hereinbefore set out; but it is possible that the defendants may attempt to set up that your petitioner has not clearly and distinctly charged this fact, and your petitioner, therefore, desires to amend his said original bill in this regard and to aver and charge this fact in plain and definite language.

Now, as to the proposed amendments to the said amended and supplemental bill your petitioner respectfully represents that he intended to make plain by the language used on pages 36, 37, 38 and 39 of his said amended and supplemental bill (amongst other things thereon stated,) that no books for subscription to the capital stock of the Richmond Traction Company were opened after the notice and in the mode required by the laws of Virginia; that all meetings held for the purpose of receiving subscriptions to the capital stock of the said company were held in violation of the laws of Virginia; that all subscriptions to said capital stock were made without the knowledge of your petitioner, without notice to him of said meetings, or of said subscriptions; without an opportunity to him to subscribe for the capital stock of the said company, with the design of excluding him from any opportunity to subscribe to any part of the said capital stock, and with the purpose of excluding him from any participation in the stock of the said company or its organization, or the determination of its policy; but the "IX Head Grounds of Demurrer" filed by the defendants has attempted to twist and distort the meaning, in this regard, intended to be conveyed by your petitioner, and he, therefore, desires to amend his said (109) amended and supplemental bill by stating the fact

above set out in language which cannot be misconstrued. Your petitioner, therefore, asks leave to add immediately after the second paragraph on page 37 of the last-named bill, a new paragraph in the language hereinbefore set out.

Your petitioner further represents that the original and amended and supplemental bills filed in this cause, together with the exhibits and the Constitution and laws of the State of Virginia, of which this court will take judicial notice, may possibly set up the matters which your petitioner desires to present for the consideration of this honorable court, by the five paragraphs hereinbefore set out, which your petitioner asks leave to add immediately after the first paragraph on page 46 of the last-named bill; but your petitioner's attention was only called to these matters a few days ago, and they are of such far reaching and vital importance that he deems it to be both his right and his duty to ask leave of this honorable court to amend his said amended and supplemental bill, by the insertion of the five paragraphs aforesaid, in order that these matters may be clearly and distinctly presented by the pleadings.

Your petitioner further represents that, in the first paragraph of his amended and supplemented bill, to be found on pages 1 and 2, he omitted to state that the cities of Richmond and Petersburg, and the counties of Hanover and Henrico, are situated within the Eastern District of Virginia. He, therefore, asks leave to amend his last-named bill by adding the following words at the end of the said first paragraph on page 2, viz.: "And the said City of Richmond, the City of Petersburg, the county of Henrico and the county of Hanover being situated in the State of Virginia, and in the Eastern District of the State of Virginia."

Your petitioner therefore prays that leave may be granted him to amend his original bill and his amended and supplemental bill filed in this cause, in the manner hereinbefore set out; and your petitioner prays for such other further general and complete relief as the nature of his case may require and to equity may seem meet.

And your petitioner will ever pray, &c.

L. H. HYER.

By STILES & HOLLADAY,

His Counsel.

STILES & HOLLADAY,

Solicitors for Petitioner.

(110) Original bill in the case of L. H. Hyer against Richmond Traction Company and others, as it reads when reprinted with amendments allowed to be made by decree entered therein on the 6th day of April, 1896.

STILES & HOLLADAY,
Solicitors for Complainant.

ORIGINAL BILL.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Hyer	}
<i>vs.</i>	
Richmond Traction Company and others.	}

Filed April 18th, 1896.

M. F. PLEASANTS,
Clerk.

(For this original bill as amended and reprinted see paper next following, upon the face of which it is reprinted in full).

AMENDED AND SUPPLEMENTAL BILL.

(111) Amended and Supplemental Bill in the case of L. H. Hyer against Richmond Traction Company and others, as it reads when reprinted with amendments allowed to be made by decree entered on the 6th day of April, 1896.

STILES and HOLLADAY,
Solicitors for Complainant.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Hyer
v.
Richmond Traction Company and others. }

Filed April 18th, 1896.

M. F. PLEASANTS, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
(112) EASTERN DISTRICT OF VIRGINIA.

Hyer
v.
Richmond Traction Company and others. }

To the Honorable Judges of the Circuit Court of the
United States for the Eastern District of Virginia :

L. H. Hyer, a citizen of the State of Missouri, residing in Warrensburg, Johnson county, in the State of Missouri, brings this bill against the Richmond Traction Company, a corporation chartered under the laws of the State of Virginia, having its residence or chief place of business in the city of Richmond, Virginia, a citizen of the State of Virginia ; John W. Middendorf and Henry A. Parr, residing (113) in the city of Baltimore, in the State of Maryland, citizens of the State of Maryland ; John L. Williams, John S. Williams, Ro. Lancaster Williams, the three last named both individually and as partners doing business under the name and style of John L. Williams & Sons, Everett Waddey, R. Shereffs, P. B. Sheild, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Louis Euker and E. B. Addison, residing in the city of Richmond, in the State of Virginia, citizens of the State of Virginia ; Charles T. Child, residing in the county of Hanover, in the State of Virginia, a citizen of the State of Virginia ; Edmund Pendleton, residing in the county of Henrico, in the State of

Virginia, a citizen of the State of Virginia; William M. Habliston, residing in the city of Petersburg, in the State of Virginia, a citizen of the State of Virginia, and the Maryland Trust Company, a corporation chartered under the laws of the State of Maryland, a citizen of the State of Maryland, having its residence or chief place of business in the city of Baltimore, Maryland. And the said city of Richmond, the city of Petersburg, the county of Henrico and the county of Hanover being situated in the State of Virginia and in the Eastern District of the State of Virginia.

And thereupon your orator complains and says as follows:

MATTER IN DISPUTE.

That the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars (\$2,000); indeed, vastly exceeds said sum or value.

ORIGINAL BILL AND PROCEEDINGS THEREON.

Your orator further sheweth unto your honors that on the 30th day of October, 1895, he filed his original bill in this cause against all the defendants herein above named, except Henry A. Parr, Ro. Lancaster Williams, E. B. Addison, William M. Habliston and the Maryland Trust Company, and that subpoenas were on the same day issued in the mode prescribed by law, returnable to March Rules, 1895, requiring all the defendants named in the bill to answer the allegations thereof, that, in pursuance of an order (114) made in this cause on the 14th day of November, 1895, by one of the judges of this Honorable Court, your orator immediately amended his said bill as authorized by said order, and that said original bill as amended, together with the exhibits filed therewith, as in the following words and figures, to-wit:

ORIGINAL BILL.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
EASTERN DISTRICT OF VIRGINIA, IN THE
FOURTH JUDICIAL CIRCUIT.

L. H. Hyer, Plaintiff,

vs.

The Richmond Traction Company, a corporation chartered under the laws of the State of Virginia; John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Shield, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton, and Louis Euker, Defendants.

To the Honorable Judges of the Circuit Court of the
United States of the Eastern District of Virginia:

L. H. Hyer, a citizen of the State of Missouri, residing in Warrensburg, Johnson county, in the State of Missouri, brings this bill against the Richmond Traction Company, a corporation chartered under the laws of the State of Virginia, a citizen of the State of Virginia, having its residence or chief place of business in the City of Richmond, Virginia; Jno. W. Middendorf, residing in the City of Baltimore, in the State of Maryland, a citizen of the State of Maryland, and John L. Williams, John S. Williams, Everett (115) Waddey, R. Shereffs, P. B. Shield, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, and Louis Euker, residing in the City of Richmond, in the State of Virginia, and citizens of the State of Virginia, Charles T. Child, residing in the County of Hanover, in the State of Virginia, a citizen of the State of Virginia, and Edmund Pendleton, residing in the County of Henrico, in the State of Virginia, a citizen of the State of Virginia. And the said city of Richmond, in the State Virginia, county of Hanover, in the State of Virginia, and county of Henrico, in the State of Virginia, being situated in the Eastern District of Virginia.

And thereupon your orator complains and says as follows:

That the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars (\$2,000.00); indeed vastly exceeds said sum or value.

II.

INDUCEMENT.

Your orator respectfully sheweth unto your honors, that he is by profession a civil engineer, and has for some years past been engaged in projecting and constructing street railways in various cities of the United States, being sometimes called to inspect and report upon fields for such enterprises, and again, himself calling the attention of capitalists and investors to what he considered favorable fields for investments in such directions.

For some years past your orator has had his attention more and more directed to Broad street and connecting streets in the City of Richmond, Va., as an attractive and promising field for a street railway; and, having secured the co-operation or assurance of adequate capital, he, last spring, made application to the Council of the City of Richmond for an appropriate franchise which—after repeated visits to the city, prolonged and arduous efforts, and the expenditure of a large sum, in traveling, hotel bills, counsel fees and other expenses—he succeeded in securing—the sum so expended being between three thousand five hundred dollars (\$3,500.00) and four thousand dollars (\$4,000.00).

III.

RICHMOND CONDUIT CO.

This franchise, which passed both branches of the City Council, was approved by the Mayor on the 17th day of June, 1895, and was granted to your orator and his associates under the name and style of the "Richmond Conduit Railway Company." After the franchise had thus become a law, it was discovered that its terms, as originally prepared and submitted by your orator and recommended by the Committee on Streets, had been altered, without the approval of your orator, who declined to accept or to proceed under it in the form in which it was finally enacted and approved. Upon open conference before the Committee on Streets of the City Council, your orator was assured that the changes made in the paper had been made under the supposition or representation that they would be acceptable to him and that, as this proved not to be the case, amendments could and would be passed restoring the franchise to its original form; provided, your orator could and would procure the deposit by a certain date, in one of the banks of the city of Richmond, of the sum of \$10,000, upon condi-

tions embodied in a paper to be prepared by the City Attorney. Your orator, therefore, on the 17th day of July, just one month after the ordinance had become a law, caused the deposit of \$10,000 to be made in the State Bank of Virginia, and then left the city and went North for conference with his associates and backers. He had given substantial and satisfactory guarantee, indeed precisely the guarantee required, of the good faith of himself and associates of the Richmond Conduit Railway Company and their earnest purpose to build the road; such guarantee moreover, as he was assured would induce the City Council to pass the proposed amendments to his franchise, restoring it to its original and approved form.

IV.

RICHMOND TRACTION Co.

During his visits to Richmond and conferences with Council Committees, with regard to his conduit ordinance, your orator became aware that certain parties were seeking to procure the grant of this franchise to them, under the name and style of the "Richmond Traction Company." But these parties appeared to be without money or resources, and did not seem likely to accomplish anything. One P. B. Sheild, an attorney at law of the city, appeared to be at the head of this movement, or at least in charge of it before the City Council and its committees; but though your orator several times saw him and his associates, he and Mr. Sheild were never introduced to each other, and, so far as your orator knows, no efforts were made on either side to open communication up to the meeting of your orator and Mr. Sheild in New York, as hereinafter set out, on the 9th day August, 1895.

Your orator's ordinance had passed both houses of the City Council and been approved by the Mayor, and though not at the time in a shape satisfactory to him, yet he had been assured and had every reason to believe that it would be put in this shape; indeed, he had given the guarantee required to make this practically certain, and the Committee on Streets had actually reported or recommended the most important of the desired amendments and that without hesitation or difficulty.

V.

MEETING WITH SHEILD.

(118) During the early part of August, 1895, your orator was in the city of New York engaged in perfecting his ar-

rangements for prompt and vigorous action under his conduit ordinance, as soon as it should be satisfactorily amended. On the morning of the 9th of August, when your orator entered the banking house of Stewart & Co., No. 40 Wall street, who had been advising with him, with a view of aiding and backing him financially in the prosecution of his enterprise, he was informed that Mr. P. B. Sheild, above mentioned, had been brought by his broker to Stewart & Co., that he had proposed to them to aid and back him in the prosecution of his Richmond Traction Company scheme; that indeed he was at that moment in another apartment of the banking house in conference with Mr. S. H. G. Stewart, the head of the firm. During the day Mr. Stewart had several interviews with the said Sheild and your orator separately. Mr. Stewart advised your orator that said Sheild had plead with him (Stewart) to get the promoters of the Richmond Traction scheme recognition in the organization of the Conduit Company, the said Sheild clearly and emphatically declaring that he desired to meet your orator for the purpose, if possible, of consolidating the interests of the Traction people, or those representing that interest, with those of the Conduit Company. The pleading for recognition and anxiety for a meeting was earnest and came from the Traction people and the said P. B. Sheild and associates, acting through the said P. B. Sheild, who declared that he had full power and authority in the premises to represent and speak for each and all of them. The said Stewart then advised your orator to shake hands with said Sheild and to unite with him upon one of the two ordinances—the Conduit or the Traction ordinance. Mr. Sheild and your orator, realizing the wisdom of this council, were then and there (119) introduced by Mr. Stewart, and, after some conference, parted to meet later at your orator's hotel, having arrived at a general agreement that the promoters of the Conduit scheme, represented by your orator, and the promoters of the Traction scheme, represented by the said Sheild, would co-operate and share equally in the ownership, control and profits of the enterprise.

VI.

THE CONTRACT.

The said Sheild and your orator met, as arranged, in your orator's room in the Grand Hotel, about 5 o'clock in the evening, and, in that room and in the lobby, freely and fully conferred. The result of this conference was embodied in a contract which took the form of a joint let-

ter from your orator and the said Sheild to S. H. G. Stewart, herein above mentioned, which letter is in the words and figures following, to-wit :

New York, August 9th, 1895.

S. H. G. Stewart, Esq. :

40 Wall street, city.

Dear Sir :

We, the undersigned, L. H. Hyer, of Washington, D. C., and Phil. B. Shield, of Richmond, Va., have this day entered into the following agreement : That both of us being interested in the procuring of a franchise for and the construction of a street railway on Broad street, in the city of Richmond, Virginia, with collateral lines, have made the following agreement : That we hereby bind ourselves, in our own behalf and for our associates, mutually to co-operate one with the other in securing a franchise for (120) said railway and to divide equally between us and our associates whatever may be realized from the enterprise, first deducting from said amount whatever actual expenses may have been incurred by either side, such expenses to be paid out of the first money realized from said enterprise.

It is further agreed between us that the deposit already made with the State Bank of Richmond, at Richmond, Virginia, by Mr. L. H. Hyer or his associates, is to stand and remain intact as it now is for the purpose of securing the franchise aforesaid, subject to any conditions for the withdrawal thereof made by Mr. Hyer with the depositor after the seventeenth day of August, 1895 ; and further, it is agreed that the application and franchise to be presented to the Common Council of the city of Richmond shall be that of the Richmond Traction Company, for the building of an overhead trolley railway or cable system.

Among ourselves we will decide what names are proper to be used in the franchise and the policy we will use in procuring the same.

Yours very respectfully,

(Signed) L. H. HYER.

(Signed) PHIL. B. SHEILD.

It will be observed that in entering into this contract your orator was acting in behalf of himself and associates, and the said Sheild in behalf of himself and associates. At the time your orator was authorized to represent, and did represent, all the parties interested in the Conduit Com-

pany's scheme, and the said Sheild stated that he had power of attorney from all the parties interested in the Traction Company's scheme, and he, the said Sheild, did actually represent them.

(121) Not only does the letter above set out embody the express contract between these parties, legally unalterable by parol evidence, but, in point of fact, this contract was first written by the said Sheild; then suggestions were made by your orator, and, perhaps, by the said Sheild also; then the paper, as thus amended, was rewritten by Sheild, and, lastly, as rewritten, it was read by an acquaintance of your orator who was present, and both contracting parties, being questioned by him, not only stated that the contract was thoroughly understood by them, but each showed his thorough understanding and comprehension of it—the said Sheild stating substantially that it was an agreement providing for a consolidation of interests, each party to have equal ownership and control in the enterprise and an equal share of profits, but each party to be first repaid all actual outlay and expenses.

Mr. Hyer agreed that the Traction ordinance should take the place of his Conduit franchise. A candid statement and explanation of this action was to be made before the Street Committee or the Council of the city of Richmond, and Sheild, acting in behalf of himself and his former associates, and also in behalf of your orator and his associates, was to apply to and secure from the Council of the city of Richmond the franchise set out in the said contract of August 9th, 1895, and your orator was to keep the \$10,000.00 in Richmond until the 17th day of August, 1895, but subject to the conditions set out in the said contract.

VII.

FULFILLMENT AND NOTICE.

Clearly, then, said Sheild understood the contract between him and your orator, and your orator now states and charges that he understood it precisely as Sheild did, and not only so, but your orator performed his part of it in the fullest measure. Said Sheild and his Traction Company associates have gotten all they bargained for from your orator; indeed, all they said they wanted, and it is easy to see what that was, and how vital to them.

(122) The Conduit people had already been granted a franchise by the City Council for a street railway on Broad street, with collateral lines, and they had \$10,000 on deposit, upon a basis satisfactory to the Street Committee,

which was an assurance of the financial standing of your orator and his associates.

At this same interview, said Sheild asked your orator what names of his associates should be inserted in the Traction ordinance. He insisted that he must have your orator's name, and he also desired to use the names of one or two of your orator's associates whom he specified. Your orator could not, at that moment, give definite instructions, but the next day he wired his friends in Richmond, whither Sheild had returned, desiring them to see him, and to have inserted in the Traction ordinance your orator's name and the names of two of his friends and associates who were specified. For a day or two subsequent to the signing of said contract of August 9th, 1895, said Sheild and his associates several times wired your orator as to sundry details of the joint enterprise, especially urging him, by all means, to see that the \$10,000.00, on deposit in Richmond, should be detained there until the meeting of the Council—an indispensable service which your orator rendered, although not at the time having received the telegrams referred to. And not only so, but your orator and his associates openly, publicly and fully carried out and performed each, all and every of the promises and covenants of your orator, in behalf of himself and associates, contained in said contract of August 9th, 1895.

And your orator here takes occasion to state that he applied for and obtained leave of court to amend this, his original bill, by emphasizing the openness, publicity and fairness with which said contract was carried into effect before the City Council and its committees; not because he considered his said bill, fairly construed, as being defective in this regard, but because it contained some loose (123) and careless expressions which might be attempted to be twisted into an admission that something other than proper and legal influences and the utmost candor and publicity was intended or practiced in the making and carrying out of the said contract of August 9, 1895.

Your orator here and now states and charges, not only that no such impression was intended to be conveyed by the bill, but that nothing approximating to it in fact occurred. On the contrary, the entire history of the Broad street franchise before the City Council and its committees was a matter of the utmost publicity. The original Conduit Railway franchise of your orator had been fully considered and discussed before the Council and by the business community, and the proposed amendments of it were publicly offered, considered and adopted before the committee on streets, and then printed; and when the Traction frau-

chise was applied for in place of the Conduit franchise, this also was openly done before the same committee; the existence and substance of the contract of City, August 9th, being generally and fully known by the Council of Richmond and the public generally, and in no way concealed or suppressed, and and it being also well and thoroughly understood by the committee on streets that the Conduit people and the Traction people had gotten together, upon the basis of this latter franchise, with the understanding that the two sides should have equal right and representation in the new company.

Your orator now charges that all promoters of the traction scheme, who were interested in it at the date of the contract with Sheild, are *clearly bound* thereby. Said Sheild stated that he had power of attorney from each and every one of them; they put him forward, and he acted for them; they took the benefit, and they must yield the consideration.

But your orator is also further advised and charges that all who have come into the Traction Company since that date are likewise bound, for they, too, are benefited by (121) the consideration your orator gave, and, if they had not full personal knowledge, as some of them undoubtedly and all along had, they certainly *had legal notice* of your orator's rights. They knew enough to put them upon inquiry. Indeed, they either knew or they deliberately refused to know anything and everything with regard to your orator's rights and interests in the joint enterprise.

VIII.

BREAKING FAITH.

Your orator is at a loss to comprehend or even fully to realize the next chapter in this history. As above intimated, after executing the agreement of August 9th, he was detained one day in New York in perfecting his preparations for vigorous prosecution of the joint enterprise, and after that in Washington by serious and continuous illness. Hearing nothing from Richmond after Sheild's return there, the telegrams above mentioned not having reached him, about the 13th of August, the day before the Council was to meet to consider the Broad-street franchise, your orator requested his associate, Wm. H. Duchay, to go at once to Richmond and find out what this silence meant. This said Duchay did, arriving in this city on the 14th, the very day of the Council meeting, and immediately interviewed Sheild, but without eliciting either explanation of his silence or satisfactory declaration as to

his attitude and purposes toward your orator. While no intimation was given of a purpose to break faith with him, or to crowd him out, yet the situation was not satisfactory, and your orator was promptly so informed.

The Traction ordinance was duly passed by the Council, and Duchay being compelled to return to Washington, Sheild promised to write him fully, but did not do so, and said Duchay wired, and your orator both wired and wrote him for explanation and information, offering also to come (125) to Richmond if vitally necessary; but neither your orator nor Duchay received any reply. Meanwhile, his friends in Richmond wrote your orator that something was wrong, and that they could get no definite information as to what was going on.

Finally, on or about the 23d of August, certainly as soon as he was well able to travel, your orator arrived in Richmond, communicating in advance with his friends to arrange a conference with Sheild, sending him word immediately upon reaching the city as to his whereabouts, and expressing a willingness to meet any appointment he might make. Sheild at first said he was too busy to make an appointment, but came in the evening to Ford's Hotel, where your orator was putting up, bringing with him one W. F. Jenkins, who had originally been associated with and represented by your orator, but who seemed then to be, (126) and is believed now to be, arrayed with said Sheild against him.

IX.

OPEN RUPTURE AND LINES DRAWN.

The conference took place about 5 or 6 P. M., not in the hotel, but on the steps of the City Hall opposite; and in the course of the interview your orator forced said Sheild to declare himself. He then openly admitted that "he had made other arrangements;" in other words, he had dropped your orator and his associates.

It is important to note that this was the first communication your orator had received from Sheild since the execution of the contract, on August 9th; that it was the first intimation received from him, or from any one on his side, that it was not his purpose to carry out said contract in good faith, and that this intimation was given nearly ten days after the Council had passed the Traction ordinance, and passed it under the circumstances above detailed, and only three days before the Board of Aldermen concurred in this action. Repudiation of such obligations at such time and under such circumstances, struck

your orator dumb with amazement, yet not quite so dumb that he did not find words to express his opinion of such treatment.

Your orator was yet far from well. He had not been able to confer with his former friends in Richmond, and did not know to what extent they had deserted him or been bought off from him. Nor does he know this even now, though it is abundantly clear that some of them have been taken care of. As above stated, the Council had acted, and the Aldermen were evidently about to concur in their action. Your orator has been deserted by some of his friends, and had little time or opportunity for conference with others. But the crisis was upon him, and whatever was to be done must be done quickly.

(127) Sheild, however, did make one suggestion that seemed not utterly devoid of promise, and which, therefore, required delay. He stated that he would call a meeting of his associates at a given hour the next morning, Saturday, the 24th of August, and it would then be finally determined what settlement, if any, they would offer. Accordingly your orator held his hands, awaiting the event; but the meeting was not held at the appointed hour, nor at a subsequent hour to which it was said to have been postponed.

When this last faint prospect of just treatment had faded absolutely away, there appeared to be but one thing remaining to your orator, and that was to give such notice as he then could of his rights and claims; such notice as would be most likely, in the brief time intervening, to reach the unknown parties, if any, who had become interested in the Traction enterprise since the 9th of August, the date of the contract at the Grand Hotel. This your orator did, by publishing in the State newspaper on Monday, the 26th of August, the very day the Aldermen acted, a statement in the words and figures following, to-wit:

"Mr. Hyer's Charges.

DISAGREEMENT AMONGST TRACTION COMPANY'S PEOPLE.—THREATENS TO BRING SUIT.

Mr. L. H. Hyer, one of the interested parties of the Richmond Conduit Company, and the fully authorized attorney and agent of that company, was seen by a reporter of the *State* and was asked if he was interested in the present Traction Company's franchise, now before the Board of Aldermen. To which he replied that he had a

contract with the Traction Company for one-half interest of their franchise, when such franchise was granted.

What is the consideration of this contract you hold?

(128) I was to cause the withdrawal of the Richmond Conduit Company's application for franchise in favor of the Traction Company, which was done in due form before the Street Committee. There are a few other minor details, all of which have been complied with.

Is the Traction Company under contract with anyone else?

I am reliably informed they are.

What do you know of these other contracts?

One is with Stewart & Co., bankers, No. 40 Wall street, New York, who, I am informed, hold a binding proposition for one-third interest in the franchise, and I have reason to believe that an effort will be made on the part of Stewart & Co. to hold the Traction Company to this proposition. I am also informed that on the 19th of August a contract was entered into with W. F. Jenkins, the terms of which, it is said, are that he is to have about one-half interest in the franchise for his services in securing the said franchise. It has also been stated to me that the company has agreed to turn over to certain bankers of this city the greater portion of this franchise for financiering the same.

What is your idea of the outcome of these complications?

I can only answer for my associates and myself. If the Board of Aldermen pass the franchise to-night, as I hope and believe they will, it is my intention to retain able counsel before leaving the city to prevent any further transaction on the part of the Traction Company, from bond or stock transfers, until they have complied with the terms of the contract.

I should infer from the above that there is lack of harmony in the Traction Company.

My impression is that all of these conflicting contracts have caused discord among the parties at interest, and I am afraid these complications will lead to litigation which (129) will prove fatal to the enterprise, which I will regret to see with my financial interests at stake.

I have just received a telegram from Stewart & Co., of 40 Wall street, New York, saying they have a binding contract, dated August 9th."

Your orator is now able to say that, before the Traction franchise became a law, this publication undoubtedly reached the parties whom it was most important to affect,

with notice of his rights; for the gentleman who is now president of that company, to-wit: John S. Williams, Esq., not only read your orator's card, but answered it in the public prints by a statement which evidenced the fullest notice of his claims, while almost contemptuously denying their validity, a statement which, as it seems to your orator, not only forever closes the mouth of the Traction Company on the subject of *notice*, but well illustrates the recklessness and violence with which claims such as are set out in this bill may be characterized by young gentlemen in too hot haste to score *success* to waste time in that patient hearing and careful investigation unavoidable by him who would do *justice*. The following is the statement referred to:

MR. HYER ANSWERED.

Commenting on Mr. Hyer's statement in last evening *State*, Mr. John Skelton Williams said:

"I never heard of Mr. Hyer until he came out in last evening's *State* with those preposterous statements. I immediately took the matter in hand to see whether there was the slightest foundation for them, and was not long in satisfying myself that his claims could not be sustained; that his action was based on the flimsiest assumptions, and was probably inspired by the enemies of the Traction Company, who hoped to spring this surprise last evening at a critical time, with the object of casting doubts upon (130) the plans and purposes of the Richmond Traction Company. His statements are not worthy of any attention.

"Will his threat of employing counsel to defend his rights in the matter interfere in any way with your plans? was asked Mr. Williams. 'Not in the slightest degree,' he replied. It may really be said we have already begun our work, that is to say, the office work, the engineering work. The preparation of plans, and so forth, is already now well under way, and very soon after the Mayor attaches his name to the ordinance, and it becomes a law, the actual physical construction of the road will be at once begun, and pushed to completion much more rapidly than the time allowed in our franchise. We shall pay no more attention to Mr. Hyer than we would to some unconcerned and disinterested person who might appear on the scene now for the first time and request a gratuitous interest in our enterprise."

(From the *State* of August 27th, 1895.)

(131) These publications your orator followed up by serving

upon every one named in the Traction Company's ordinance, as passed by both houses of the City Council and approved by the Mayor (a copy of which as published, is herewith filed, marked Exhibit "A," and prayed to be read and taken as part hereof), formal notice in words and figures following, to-wit:

Richmond, Va., September 3d, 1895.

To John W. Middendorf, John L. Williams, Everett Waddey, R. Sherreffs, P. B. Sheild, C. T. Child and W. F. Jenkins, and through them, to each and every party, who on or since the ninth day of August, 1895, has been associated with them, or with any or with either of them, in the premises.

Take notice, that L. H. Hyer, in behalf of himself and associates, claims to be entitled to a full one-half interest in the franchise recently granted by the City Council of the city of Richmond, Virginia, to Jno. W. Middendorf, John L. Williams, Everett Waddey, R. Sherreffs, P. B. Sheild, C. T. Child and W. F. Jenkins and associates, to build and operate an electric street-car line in the said city, on Broad and other streets—said interest being claimed under a contract bearing date August ninth, 1895, entered into between P. B. Sheild and associates, through P. B. Sheild, and L. H. Hyer, in behalf of himself and associates—one original of which is in the hands of said P. B. Sheild and one is in the hands of Stiles & Holliday, attorneys at law, 1014 east Main St., Richmond, Virginia, the latter being open to your inspection; and, if the rights of the said L. H. Hyer and associates are not recognized and conceded, that they intend forthwith to apply to the courts to enforce their rights in the premises.

(132) This formal notice is not intended as an implication or even admission that you have not all along been aware of the rights and claims above asserted.

L. H. HYER.
By STILES & HOLLADAY,
Attorneys.

Your orator has already stated to the court that when he entered into the contract of August 9th with Sheild and associates, he did so on behalf of himself and associates—the promoters of the Richmond Conduit Railway Company's scheme. He deems it proper to state that since that date, all his then associates, with the exception of said W. F. Jenkins, A. B. Guigon, Edmund Pendleton and Louis Euker—the last three of whom required your

orator to execute a paper recognizing the said Jenkins as trustee and representative of their rights and interests in the enterprise—have made legal transfer and assignment of their rights and interests in the premises to him; so that, with the exception just above mentioned and just below considered, your orator, in his own right and behalf, now controls, represents, embodies and respectfully presses before the court the right in law and equity to everything which said contract of August 9th assured to all the promoters of the conduit scheme, to-wit: a full one-half interest therein and thereunder. He deems it proper also to add that all his said assignors, at the date of said contract, and at the dates of their respective assignments to him, and at the date of the institution of this suit, were and that they still are, citizens of States of this Union other than the State of Virginia.

As to the rights and interests, at the date of said contract with Sheild, vested in W. F. Jenkins and W. F. Jenkins, trustee, your orator now distinctly states and charges that said rights and interests are not only comparatively insignificant, but that they have no longer any legal or valid existence, as against or in diminution of the (133) rights and interests of your orator. First, because, as he believes and charges, said Jenkins has abandoned said rights and interests and makes no claim to them. Not seeing how it was possible under the circumstances that he could make such claim, your orator, prior to the institution of this suit and with a view thereto, addressed and delivered to said Jenkins a communication in the words and figures following, to-wit:

ROBERT STILES.

ADDISON L. HOLLADAY,

Late Judge Chancery Court of Richmond.

Law Office of

STILES & HOLLADAY,

1014 E. Main Street.

Richmond, Va., Sept. 18th, 1895.

W. F. Jenkins, Esq., City.

Dear Sir—As counsel for L. H. Hyer we write to ask whether you claim any rights of any character under the paper handed you as trustee by L. H. Hyer on the 17th day of July, 1895. If you assert any claim of any character under this paper, please furnish us with a copy of the same or name an early time and place when and where we can meet you and read the paper in question.

Yours truly,

(Signed) STILES & HOLLADAY.

To this communication your orator has received no reply; but he now goes further and charges that, even if said Jenkins should advance such claim, it would be manifestly inconsistent, null and void, said Jenkins being not only one of the incorporators of the Richmond Traction Company, but having thoroughly cast his lot with said Sheild and his traction people whose entire position is (134) based upon the repudiation and denial of any and all right or claim in your orator or those represented by him in the contract of August 9th.

Your orator further avers and charges that the said Phil B. Sheild is utterly and hopelessly insolvent, and that nothing could be made out of him by a judgment at law, or decree for the payment of money.

Your orator further avers and charges that it is within the power of the defendants to specifically carry out and perform the said contract of August 9, 1895, according to its true meaning and intent as hereinbefore set out.

And now, in conclusion and upon the basis of the foregoing recital of facts, your orator distinctly claims and charges, and repeats the claim and charge, that he is fairly and justly entitled to a full one-half interest in the Traction Company's enterprise and franchise, that he has been unfairly and unjustly defrauded of the same, and that he will be exposed to irreparable injury, unless the court, by its benevolent writ of injunction, shall interfere to prevent said franchise or any part thereof from being assigned, transferred or encumbered to, or in favor of, innocent parties unaffected with notice of his rights.

For as much, therefore, as your orator is remediless save in a Court of Equity where such wrongs are properly cognizable and relieveable, he prays that the Richmond Traction Company, John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Sheild, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton and Louis Euker be made parties defendant to this bill and required to answer the same, but answer under oath from each and every one of said defendants is hereby expressly waived; that, if it shall be ascertained during the progress of this cause, that the said Shield represented other persons who have not been made parties defendant to this bill, then such other persons, when their names shall be discovered, be also made parties defendant hereto and required to answer this bill, but oath to said answers and to each and every one of them is also expressly waived; that each and all of said parties defendant, their agents and servants, be enjoined and restrained from transferring or encumber-

ing the franchise or property of the said Richmond Traction Company, or any part thereof, or any interest therein, or from issuing any stock or bonds of said company, or in any other way borrowing money for the use of said company upon its franchise or property; that your orator may (135) be decreed by this honorable court to have valid right and claim to a full one-half interest in and under said contract of August 9th; and, upon the basis of said contract, to have such right and claim to a full one half interest in the said Richmond Traction Company's franchise, enterprise, property and stock; that specific execution of said contract be decreed your orator and enforced under the power and process of the court; that all parties defendant be required and compelled by the process of the court to do and perform every act which may be requisite and necessary to the vesting of your orator's full rights in the premises; and that your orator may have such other, further, general and complete relief as may be agreeable to equity and the nature of his case; and also that a writ of subpoena issue out of and under the seal of this honorable court directed to the said defendants, the Richmond Traction Company, John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Sheild, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton and Louis Euker, commanding it and them and each of them upon a certain date therein named to be and appear in this honorable court and there to answer all and singular the premises and to abide by and perform such order and decree as may be entered by the court in the cause, but answer under oath from each and all of the said defendants is hereby waived. And your orator, as in duty bound, will ever pray, etc.

(Signed) L. H. HYER.

By STILES & HOLLADAY.

STILES & HOLLADAY,

Solicitors for Complainant.

(136)

EXHIBIT "A" WITH BILL.

An Ordinance to Authorize the Construction and Operation of a Street Railway Within the Limits of the City of Richmond by the Richmond Traction Company.

(This paper is here omitted, because heretofore copied at length in this record. See page 17.)

No one of the defendants to the said original bill has filed or tendered his answer thereto, but said defendants, by their solicitor, on the 31st day of October, 1895, placed among the papers of the cause, in the clerk's office of this court, their written demurrer to the said original bill.

NEW MATTER.

SUBSCRIPTION TO STOCK AND ORGANIZATION OF COMPANY.

And now, by way of amendment and supplement to the said original bill, your orator says that he has been informed, believes and therefore charges that no books for (138) subscription to the capital stock of the said Richmond Traction Company were opened, after proper legal notice and in the mode prescribed by law; that, without such notice and in violation of the laws of Virginia, the said John L. Williams, John Skelton Williams and Ro. Lancaster Williams, comprising a firm and partnership doing business under the name and style of John L. Williams & Sons, John W. Middendorf, Everett Waddey, R. Shereffs, P. B. Sheild, W. F. Jenkins and Charles T. Child, some time in September, 1895, met together, at the banking house of the said John L. Williams & Sons, in the city of Richmond, Virginia, and went through the form of signing their names to a paper purporting to be a subscription list agreeing to take \$300,000 of the capital stock of the said Richmond Traction Company, in the following proportions, viz.: John L. William & Sons, \$280,000; John W. Middendorf, \$5,000; Everett Waddey, \$3,000; R. Shereffs, \$3,000; Phil. B. Sheild, \$3,000; Charles T. Child, \$3,000, and W. F. Jenkins, \$3,000.

Your orator has been informed, and believes and therefore charges that prior to and at the time of the said subscription, each, all and every of the said subscribers for the capital stock of the said company had been put upon inquiry as to the rights of your orator afterwards set out in his original bill, and inquiry by them, or by either of them, would have disclosed to them and to each of them, all the facts afterwards set out in said bill; that, indeed, each, all and every of the aforesaid subscribers had actual notice and knowledge of all your orator's said claims and rights, as afterwards set out in his said original bill, at the time of and prior to their said subscriptions.

And your orator now further and distinctly charges that said subscriptions were made without his knowledge, without notice to him of said meetings, or of said subscriptions; without any opportunity to him to subscribe to the capital stock of said Richmond Traction Company, and

with the design of excluding him from any opportunity to subscribe for any part of the said capital stock, and with the purpose of excluding him from any participation in the stock of said company, or its organization, or the determination of its policy.

Your orator has been further informed, believes and therefore charges that no payment whatever was actually made at the time of subscribing or at any time subsequent thereto, by any or either of the said subscribers, for the capital stock of the said company; that any pretended payment in money or by checks or otherwise made at any time (139) or in any form by said subscribers or by any or either of them, for the said capital stock or any part thereof, or any pretended passing of a consideration of any character to the said Richmond Traction Company, from the said subscribers, or any or either of them, in payment for the said stock or any part thereof, were fictitious and were wrongful and unlawful attempts to evade the laws of this Commonwealth; and your orator has been further informed, believes and therefore charges that since the time of their said subscriptions and without any lawful or valid payment from the said subscribers, or either of them, certificates, purporting to be for fully paid-up stock of the said company, therefore, have been wrongfully and illegally issued to the aforesaid subscribers for the amounts of their respective subscriptions.

Your orator is also further informed, believes and therefore charges that the said so-called subscribers to the stock of the said Richmond Traction Company, on the very day of their said subscriptions, without having made or even pretended to make any payment of any character therefor, and without having complied with the laws of Virginia in respect to the formation and organization of joint stock companies, proceeded to go through the form of electing the following persons as a Board of Directors of the said company, viz.: John Skelton Williams, William M. Habliston, Philip B. Sheild, Everett Waddey, John W. Middendorf, Henry A. Parr and E. B. Addison, and of electing the said John Skelton Williams as president of the said company and William M. Habliston vice-president of the said company, and of authorizing the said pretended Board of Directors to appoint a secretary and treasurer for the said company.

Your orator further charges that all the aforesaid acts and doings of the aforesaid subscribers for the stock of the Richmond Traction Company and alleged stockholders thereof were done and performed with intent to hinder, delay and defraud your orator of and from what

(140) he was and is lawfully entitled to, and were and are null and void under the laws of this Commonwealth. Your orator has been further informed, and believes and therefore charges, that each of the said directors, viz.: John Skelton Williams, William M. Habliston, Philip B. Sheild, Everett Waddey, John W. Middendorf, Henry A. Parr and E. B. Addison, at the time of their election, had been put upon inquiry as to all of the above recited facts and also as to the claims and rights of your orator, as set out in his said original bill, and inquiry by them or either of them would have disclosed to them and to each of them all the said facts and all the said rights and claims of your orator; indeed, that each, all and every of said directors, except the said E. B. Addison, at the time of their said election, had actual notice and knowledge of said facts and of said rights and claims of your orator and of the above recited illegal and wrongful actings and doings of the said subscribers to stock or alleged stockholders, and participated also in their said intent to hinder, delay and defraud your orator in the premises.

Your orator charges that the said election of each, all and every of the said directors was null and void in law; and your orator avers and charges that the said directors, with the exception of the said E. B. Addison, with a full knowledge of all the above recited facts, proceeded, on the day of their own so-called election, to appoint Everett Waddey as secretary and Ro. Lancaster Williams as treasurer of the said corporation, which two said appointments your orator charges to have been illegal and utterly null and void.

AUTHORIZATION AND EXECUTION OF MORTGAGE.

Your orator further says that he has been informed, believes and therefore charges that on the day following the filing of his said original bill in the clerk's office of this court (viz.: on the 31st day of October, 1895), each, (141) all and every of the defendants named therein, and the Maryland Trust Company, a corporation chartered under the laws of the State of Maryland, had actual notice and knowledge of the filing of the said bill, and of each, all and every allegation, statement and charge contained therein; and, in addition to this actual knowledge, that all the said defendants to the original bill, except John W. Middendorf, had constructive notice of the filing of the said bill, its contents and the rights of your orator by the service upon them and each of them by the United States Marshal for the Eastern District of Virginia, in the said district, on the 31st day of October, 1895, of the aforesaid

subpœnas requiring them to answer the said bill; that on the day last named each, all and every of the said defendants (and the said Maryland Trust Company), the individuals acting in person or by their agents, solicitors, counsel or attorneys, and the said Richmond Traction Company and the said Maryland Trust Company, by those acting as their officers, directors, agents, servants, solicitors, counsel and attorneys, read or discussed the said bill and the rights of your orator as therein set out; that the said defendants to the said original bill, including the said John W. Middendorf, by their solicitors, counsel and attorneys, prepared and placed among the papers of this cause in the clerk's office of this honorable court on the 31st day of October, 1895, their written demurrer to the said bill; that, for the purpose of wrongfully and unlawfully depriving your orator of his said rights, they determined to hold on the 1st day of November, 1895, a meeting of such persons claiming to be stockholders of the said Richmond Traction Company, or subscribers as aforesaid for the said capital stock, as could be assembled at the office of Messrs. John L. Williams & Sons, in the city of Richmond, Va., and to have resolutions adopted by such alleged stockholders or persons claiming to be such stockholders, directing the execution of a mortgage, from the said Richmond Traction (142) Company to the said Maryland Trust Company, as trustee, conveying the franchises and all property and assets of the said Richmond Traction Company to secure the payment of five hundred bonds of one thousand dollars each, to be issued by the said last-named company, negotiated and sold by the said Maryland Trust Company and the said John L. Williams & Sons, and the proceeds to be paid over to the said Richmond Traction Company, its so-called officers and directors, and disbursed by them in such manner as to wrongfully and illegally deprive your orator of his just and legal rights in the premises; that certain of the alleged stockholders or persons claiming to be stockholders of the said Richmond Traction Company met at the time and place named, and went through the form of adopting resolutions authorizing the execution of the said trust deed or mortgage, and the issue and sale of bonds of the said Richmond Traction Company and a disposition of the proceeds of the sale thereof, a copy of which resolutions will be found written out upon the face of the trust deed or mortgage, hereinafter filed as an exhibit with this bill, and are prayed to be read and treated as if here inserted in full; but your orator has been informed, believes, and therefore charges, that no regular, proper or legal notice of the time and place of the said meeting was

given; that certain subscribers for the capital stock of the said company, or persons claiming to be stockholders therein, standing upon the same footing with all other stockholders or alleged subscribers to the stock; had no notice or knowledge of the time and place for the said meeting; that the said stockholders' meeting, so pretended or attempted to be held on the 1st day of November, 1895 (as then constituted), had no power to authorize and direct the execution of a mortgage or trust deed upon the franchises and assets of the Richmond Traction Company, or to adopt the aforesaid resolutions; that no person who attended the said stockholders' meeting was in contemplation (143) of law and of the statutes of Virginia, an actual *bona fide* stockholder of the said company, clothed with power or authority to exercise any of the powers or functions of a stockholder in a joint-stock company under the laws of the State of Virginia; that no pretended stockholder who attended the said meeting had paid a dollar, in money, or otherwise, upon his subscription to the capital stock of the said company; that the said meeting was held, or attempted to be held, in violation of the laws of the State of Virginia, and that the said resolutions and all proceedings had, or attempted to be had, at said meeting were therefore null and void; that even if all persons who had subscribed for the capital stock had been present at, or had notice of the said stockholders' meeting, which is denied, no resolutions authorizing the execution of the said trust deed or mortgage could have been lawfully adopted by them, as they were not lawful stockholders, and had no lawful powers and no actual rights, and were all wrongdoers, attempting to hinder, delay and defraud your orator of and from what he was and is lawfully entitled to, and for this reason, also, your orator charges that the said resolutions were and are null and void. Your orator has also been informed, believes and charges that the said stockholders, and each of them, who attended said meeting of November 1st, 1895, had before them at that time a copy of your orator's said bill, filed on the 30th day of October, 1895, or data and memorandum of its contents, or had previously read and discussed the said bill; that each, all and every of the said stockholders, prior to and at the time of the said meeting, had actual notice or knowledge of the several allegations, statements and charges contained in the said bill, and of the rights of your orator in the premises, and that said resolutions were adopted, or attempted to be adopted, with intent to hinder, delay and defraud your orator of and from what he is and was lawfully entitled to, and that the said resolutions and all proceedings

(144) had thereunder are, for this reason, also, wholly null and void.

In view of these facts your orator is advised and charges that each and every of the said stockholders who participated in said meeting, either in person or by proxy, made himself personally, jointly and severally liable to your orator for all loss and damage that may result to him from the adoption of the aforesaid resolutions and the proceedings had thereunder or connected therewith; and while your orator has not been able to ascertain fully who was present at the said alleged stockholders' meeting of November 1st, 1895, he has been informed, believes, and therefore charges, that the following subscribers for the said stock were present, and participated in the said so-called stockholders' meeting, viz.: John W. Middendorf, John L. Williams & Sons, John L. Williams, John Skelton Williams, Ro. Lancaster Williams, Everett Waddey and P. B. Sheild.

Your orator further sheweth unto your honors that he has been informed, believes, and therefore charges, that immediately after the adoption of the aforesaid resolution, on the first day of November, 1895, by the so-called stockholders' meeting of the Richmond Traction Company the so-called directors of said company, on the same day and at the same place, attempted to hold a director's meeting; that said meeting was held in violation of the laws of the State of Virginia and in violation of the by-laws of said company; that, at the said meeting, the so-called directors in attendance went through the form of adopting resolutions authorizing and directing the execution of the aforesaid mortgage or trust deed, the negotiation and sale of the bonds secured thereby, and the disposition of the proceeds of the sale of said bonds; a copy of which resolutions will be found embodied in the trust deed or mortgage, hereinafter filed as an exhibit with this bill, and are now prayed to be read and treated as if here inserted in full; that said resolutions so adopted, or attempted to be (145) adopted, and all the proceedings of the said so-called directors' meeting of November 1st, 1895, were wholly illegal, null and void, and were had and adopted without lawful authority, by individuals having no power or authority to act as a board of directors for the said Richmond Traction Company, and that said resolutions were made and adopted with intent to hinder, delay and defraud your orator of and from what he was and is lawfully entitled to, and are on this account also wholly illegal, null and void.

And, while your orator has been unable to ascertain

whether all the aforesaid alleged directors of the said Richmond Traction Company attended said so-called meeting of said so-called board of directors of said company, held November 1st, 1895, your orator has been informed, believes, and charges that the said John W. Middendorf, John Skelton Williams and Wm. M. Habliston did attend said so-called meeting, and your orator is advised, and therefore charges, that said meeting was not a legal and valid meeting of the board of directors of the said company, and that the individuals who attended and took part in said meeting thereby made themselves personally, jointly and severally liable to your orator for all loss and damage which have accrued or may hereafter accrue to to him from the action of the aforesaid meetings of November 1st, 1895.

Your orator is yet further advised, and charges that such of the so-called directors as absented themselves from said so-called meeting of the board of directors of the said company, held on the first day of November, 1895, with the exception of the said E. B. Addison, did so with full knowledge of your orator's rights in the premises, and of the intent and purpose of the said meeting to hinder, delay and defraud your orator of his said rights, and so absented themselves for the purpose of enabling those in attendance to adopt the aforesaid resolutions, which were adopted; and, therefore, your orator further charges that (146) the said so-called directors who so absented themselves from said meeting of November 1, 1895, also made themselves, personally, jointly and severally liable to your orator for all loss and damage which have accrued, or may hereafter accrue to him from the action of the so-called meeting.

Your orator is not informed that the said E. B. Addison took part in the said meeting and proceedings of the so-called Board of Directors of the Richmond Traction Company, of which he has been, and, as your orator believes, still is formally a member. Indeed, your orator's information leads him to believe that the said Addison did not take such part, and was not informed of the intent of the other directors, and did not attend or participate in said so-called directors' meeting of November 1st, 1895, and, as at present advised, your orator does not include, or intend to include, the said Addison in his aforesaid charges of wrongful and unlawful conduct on the part of the said directors of the said company; but, if hereafter advised or informed that the said Addison did attend and participate in the action of the said meeting of November 1st, 1895, or otherwise participate in the proceedings of

the said so-called board of directors of said company, your orator will ask leave to amend his bill so as to pray for personal relief against said E. B. Addison also.

Your orator further sheweth that, following the adoption of the two aforesaid resolutions, the said Richmond Traction Company, acting by John Skelton Williams, as president, executed to the said Maryland Trust Company, as trustee, a trust deed or mortgage (being the mortgage authorized, contemplated and directed by the said resolutions) bearing date the 1st day of November, 1895, acknowledged by the said John Skelton Williams, as president, on the 4th day of November, 1895, signed also by the said Maryland Trust Company, and by it acknowledged on the said 4th day of November, 1895, and recorded on the last-named day in the Clerk's Office of the Chancery Court of (147) the city of Richmond, which said mortgage or deed of trust purports to be executed by authority of the aforesaid resolutions, which are copied at large upon the face thereof, and conveys the franchises of the said Richmond Traction Company, and all of its property and assets, to the said trustee, to secure the payment of the principal and interest of the said five hundred bonds of one thousand dollars each, particularly described in said trust deed or mortgage, a copy of which is herewith filed, marked "Exhibit B," and is prayed to be taken and read as a part of this amended and supplemental bill, as if here set out at full length.

Your orator is further advised and charges that the said mortgage or trust deed from the said Richmond Traction Company to the said Maryland Trust Company, as trustee, was made and executed in plain violation of the provisions of Section 1232 of the Code of Virginia, Edition 1887, which is in the following words and figures, to wit:

"Sec. 1232. Power to borrow money.—No company, unless expressly authorized by its charter, shall borrow money until there shall be paid up and expended or appropriated the whole amount of capital stock subscribed, with the exception only of losses by delinquent or insolvent stockholders. But the president and directors may borrow an amount not exceeding that part of the capital stock which is unsubscribed, and may issue certificates for the money so borrowed, and may make such certificates convertible, within a prescribed time, into stock of the company, at the pleasure of the holder."

The said Richmond Traction Company claims to have been created by an ordinance of the Council of the City of Richmond, approved on the 28th day of August, 1895,

a copy of which was filed with your orator's original bill in this cause, marked "Exhibit A with Bill," which ordinance was passed pursuant to an Act of the General Assembly of Virginia, passed March 20th, 1860, entitled "An act to authorize the Common Council of Richmond (148) to authorize persons to construct railroads in the streets of said city." See Acts of Assembly of Virginia, 1859-'60, Chapter 214. But your orator is advised, and therefore charges, that such last mentioned act is unconstitutional and void so far as it undertakes to delegate to the City Council of the city of Richmond the authority to prescribe and define the powers and duties of the Richmond Traction Company; and your orator is also advised and charges that all the powers attempted to be conferred by the said act, on companies to be formed under it, save and except the power to construct railroads in the streets of said city are void, because they are not embraced or expressed within the title of said act, as required by Sec. 16, Article IV. of the Constitution of Virginia, in force at the time of the passage of the said act, which said section of the Constitution of Virginia is in the following words and figures, to-wit:

"No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revised or amended by reference to its title, but the act revised or section amended shall be re-enacted and published at length."

Your orator therefore charges that the said Richmond Traction Company was not expressly authorized by its charter to borrow money, and that the whole amount of its subscribed capital stock had not been paid up and expended or appropriated, with the exception of losses by delinquent or insolvent stockholders, when the foregoing trust deed or mortgage was executed. On the contrary, your orator avers that the entire capital stock of said company was subscribed for by John L. Williams & Sons and their associates, as herein stated, and that no part of said capital stock has been paid, but the whole amount thereof still remains unpaid. And your orator avers and charges that in (149) such circumstances the said Richmond Traction Company was prohibited by law from borrowing money or executing any deed of trust or mortgage to secure the same.

Your orator has been informed, believes, and, therefore, charges, that said trust deed or mortgage was made and executed without lawful authority, and that the same should, therefore, be declared null and void by this honorable court; that the object and purpose of the said deed,

of the sale of the bonds thereby secured, and of the disposition of the proceeds of sale thereunder directed, were to deprive your orator of his just and legal rights as set out in his original bill; that said trust deed or mortgage was made and executed with intent to hinder, delay and defraud your orator of and from what he was and is lawfully entitled to receive; and that the said Maryland Trust Company had notice and knowledge of each, all and every of the facts hereinbefore set out, and especially of the fraudulent character of the said trust deed or mortgage, and of the aforesaid resolutions, and of the fraudulent intent with which each and every of them was adopted, made and executed, and that the said trust deed or mortgage should, for these reasons, also be declared null and void, and wholly annulled and set aside.

As bearing on the unlawful intent and character of the said deed, your orator now calls attention to the following marked features thereof, to-wit: that the aforesaid resolutions adopted by the so-called stockholders of the said Richmond Traction Company at their said meeting (150) held on the first day of November, 1895, purporting to authorize the execution of the said trust deed to the Maryland Trust Company (a copy of which resolutions may be found on the face of the said deed), required that each of the bonds secured thereby should contain a provision in the following words, viz:

"The holder of this bond agrees that no recourse shall be had for its payment to the individual responsibility of any stockholder, director or officer of the mortgagor by reason of any liability whatsoever incurred by or imposed on him by virtue of any law or statute which may now or hereafter be in force."

And, not content with the aforesaid attempted exemption from personal liability (by the resolutions of the said so-called stockholders and the clause required by them to be inserted in the said bonds), the said so-called board of directors, at their meeting held on the first day of November, 1895, in the resolution adopted by such of them as were present on that occasion purporting to authorize the execution of the said mortgage of trust deed to the said Maryland Trust Company, required the insertion therein of a provision in the following words, which may also be found on the face of said instrument, viz:

ARTICLE XI.

"No holder of any of the bonds or coupons hereby

secured shall have recourse for the payment thereof to the individual responsibility of any stockholder, director or officer of the mortgagor by reason of any liability whatsoever incurred or imposed on him by virtue of any law or statute which may now or hereafter be in force."

But, while the aforesaid provisions contained in the said resolution and mortgage, attempting to exempt themselves from personal liability, serve to illustrate the intent (151) of the aforesaid so-called stockholders and directors in respect to their actings and doings in the premises, and their fear of personal responsibility therefor, yet your orator is advised and charges that these provisions are contrary to public policy, and for this reason, as well as for all other reasons hereinbefore recited, the said bonds and trust deed or mortgage are null and void in law. Let it be understood, however, that in making this charge, based upon the special features just mentioned, your orator does not intend in any way to yield his contention that the said trust deed or mortgage is fraudulent and void throughout. On the contrary, your orator again charges that the said trust deed or mortgage, in all of its parts and provisions, is fraudulent in law and in fact, and that the grantee in the said trust deed or mortgage had notice of the fraudulent intent of its immediate grantor, and that, therefore, the said trust deed or mortgage should be annulled and set aside.

Your orator is further advised and charges that whatever may be said by or in behalf of any of the defendants, except the said E. B. Addison, as to the absence of any particular one or more of the said stockholders or directors of the said Richmond Traction Company from said meetings of November 1st, 1895, and whatever ingenious contention may be set up as to the consequent freedom from personal liability of any such absent stockholder or director for the action had and taken at said meetings or either of them, and especially for the resolutions above mentioned adopted at said meetings and the action taken pursuant thereto, there can be no doubt or question as to the liability in the premises of John W. Middendorf, John Skelton Williams, John L. Williams, Ro. Lancaster Williams, Everett Wadley, P. B. Sheild, John L. Williams & Sons and the Maryland Trust Company: not alone because said parties were present or represented at one or both of said meetings, but because they had otherwise the clearest and fullest notice of your orator's rights and claims in the premises; because some of them publicly denied, scouted, and ridiculed said rights and claims and

(152) declared that they would pay no attention to the assertion of them, because all of them were specially active and influential in carrying out the scheme and plan by which your orator has been thus far cut off from any and all realization of his said rights; because the said John L. Williams & Sons and the Maryland Trust Company managed and engineered this entire scheme, and because the Maryland Trust Company, the trustee in said mortgage or deed of trust, was not only to the fullest extent informed as to the rights and claims of your orator in the premises; but, being so informed, thereafter advised, aided and abetted the determination and action of the said so-called stockholders' and directors' meetings and the adoption of each and all of the aforesaid resolutions, and sought and obtained the position and emoluments of trustee in the mortgage or trust deed of the Richmond Traction Company, prepared and executed pursuant to said resolutions. On these and other grounds your orator is advised and charges that all said last mentioned parties *i. e.*—all mentioned in this paragraph, except E. B. Addison, and especially said Maryland Trust Company, should be held to the fullest extent liable to your orator for all loss and damage which have accrued and all that may hereafter accrue to him, from the action of said meetings of Nov. 1st, 1895, the adoption of said resolutions at said meetings, the execution of said mortgage or trust deed, the negotiation of the bonds secured thereby and the disposition of the proceeds of the sale of said bonds.

Your orator is further and finally advised, and therefore charges, that all the so-called stockholders and directors of the Richmond Traction Company who are made defendants to this bill, except the said E. B. Addison, were wrongdoers conspiring together with intent to hinder, delay and defraud your orator of and from what he was and is lawfully entitled to receive, and are therefore, and for the reasons hereinbefore mentioned, personally, jointly and (153) severally liable to your orator as in the paragraph last above set out, and for all loss and damage which has accrued or may hereafter accrue to your orator from the organization of the Richmond Traction Company, the making of contracts in its name and from its debts or liabilities, if any such there be.

Yet, notwithstanding the personal liability of the said parties to him, your orator is advised and charges that he will be exposed to irreparable injury, unless the court interfere by injunction to prevent the further negotiation and sale of the bonds issued by the Richmond Traction Company and the further expenditure of the money re-

ceived for such sale, and the making and execution of contracts in its name and appoint a receiver to take charge of all property and assets of the said company.

For as much, therefore, as your orator is remediless, save in a Court of Equity where such wrongs are properly cognizable and relievable, he prays that the Richmond Traction Company, John W. Middendorf, Henry A. Parr, John L. Williams, John S. Williams, Ro. Lancaster Williams, the three last named both individually and as partners doing business under the name and style of John L. Williams & Sons, Everett Waddey, R. Shereffs, P. B. Sheild, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Louis Euker, E. B. Addison, Charles T. Child, Edmund Pendleton, William M. Habliston and the Maryland Trust Company, be made parties defendant to this bill and required to answer the same, but answer under oath from each, all and every of the said defendants is hereby waived; that the relief sought and prayed for in his original bill heretofore filed in this cause may be granted to your orator, and, to that end, he here again presents and respectfully presses upon the attention and grace of the court the several prayers of his said original bill, and prays that they may be read, treated and granted as if here again fully repeated and written out; that the so-called subscription to the capital stock of the said Richmond Traction Company made as hereinabove set out, may be declared and decreed to be illegal, null and void; that the script or stock certificates issued to the several so-called subscribers to the capital stock of the said company, upon and by virtue of their so-called subscriptions, may be ordered to be delivered up, declared null and void and cancelled; that the organization of the said Richmond Traction Company and the election of its so-called officers and board of directors, (154) upon the basis of the so-called subscriptions and stock, may be declared and decreed to be illegal and null and void, and that the same may be vacated by the decree of this Court; that the so-called stockholders' and directors' meetings of the said company, held as above set out on the 1st day of November, 1895, and all the proceedings of the said meetings may be declared to be illegal and invalid, and particularly that the resolutions adopted at the said meetings authorizing and directing the execution of the mortgage or trust deed from the said Richmond Traction Company to the said Maryland Trust Company, as trustee, conveying the franchises, property and assets of said company to secure the bonds to be issued by it, and directing the negotiation and sale of said bonds and disposition of the proceeds of such sale, which resolutions are

written out upon the face of said mortgage or deed of trust, may be declared to be illegal, invalid, null and void, that for all the reasons recited in this bill, the said mortgage or trust deed may be declared to be illegal, null and void and be set aside by decree of this court; that all the bonds so secured by said mortgage or trust deed which have been negotiated and sold may be called in, and that these and all other bonds executed or issued pursuant to the resolutions aforesaid may be decreed to be delivered up and cancelled; that all the so-called stockholders and directors of the said Richmond Traction Company, except the said E. B. Addison, and particularly such of them as attended the said stockholders' and directors' meetings of November 1, 1895, which passed and adopted the resolutions aforesaid, may be declared and decreed to be wrong-doers conspiring together with intent to hinder, delay and defraud your orator of his just rights in the premises, and may be held and decreed to be personally, jointly and severally liable to your orator for all loss and damage which have accrued, or may hereafter accrue to him in consequence of the action of the said meetings of November 1st, 1895, the adoption of said resolutions (155) at said meetings, the execution of said mortgage or trust deed, the negotiation of the funds secured thereby and the disposition of the proceeds of the sale of said bonds; that all the defendants may be required and decreed to do, perform and pay whatever may be necessary, to discharge the said Richmond Traction Company and franchise from the consequences of the organization of the said company, and from all contracts, debts and liabilities contracted in the name of the said company, and in all respects to discharge and exonerate the said company and franchise from the payment of all of its debts, liabilities and contracts of every character whatsoever, so far as the same may be prejudicial to the rights of your orator. That the said Maryland Trust Company may be enjoined and restrained from discharging any, all and every of the acts or duties of trustee imposed upon or assumed by it under the said trust deed or mortgage, and especially from authenticating any of the said bonds intended to be secured by the said trust deed or mortgage by the signature of its president to the certificate endorsed on the said bonds, and from delivering the said bonds, or any or either of them, to the said Richmond Traction Company, its president, vice-president, officers or agents, or to any other persons acting for it or in its name, and from selling or otherwise disposing of the said bonds, or either of them, and from paying over any funds in its

hands from the sale or other disposition of the said bonds, or any or either of them, to the said Richmond Traction Company, its officers, directors, agents or others, acting for it or in its name; that the said Richmond Traction Company, its officers, directors, agents, and others acting by or under its authority may be enjoined and restrained from selling or otherwise disposing of the said bonds, or any or either of them, and from paying out or otherwise disposing of the proceeds derived from the sale or other disposition of the said bonds, or any or either of them; that the said Richmond Traction Company, its officers, directors and all others acting or pur-(156) porting to act in its name may be enjoined and restrained from entering into any contract or incurring any debt or liability in the name of the said Richmond Traction Company, or exercising any of the rights, powers, functions or privileges of the Richmond Traction Company; that a receiver may be appointed pending the determination of this cause to take charge of all of the aforesaid bonds, of all the proceeds from the sale of such of them as may have been sold or otherwise disposed of, and of all the property and assets of the said Richmond Traction Company of every character and wherever situated; and that all proper inquiries may be made, accounts taken and decrees entered; and your orator further prays that he may have and be granted such other, further, general and complete relief as may be agreeable to equity and the nature of his case.

Your orator also prays that a writ of subpœna may issue out of and under the seal of this honorable court directed to each, all and every of the persons and corporators hereinbefore prayed to be made parties defendant to this amended and supplemental bill, commanding them and each of them, upon a certain date named therein, to be and appear in this honorable court, and there to answer all and singular the premises and to abide by and perform such order and decree as may be entered by the court in this cause; but answer under oath from each and all of the said defendants is hereby waived.

And your orator, as in duty bound, will ever pray &c.

L. H. HYER.

By STILES & HOLLADAY,

STILES & HOLLADAY,

Solicitors for Complainant.

"EXHIBIT B."

"Exhibit B," with amended and supplemental bill, being a copy of the trust deed or mortgage of November 1, 1895.

(Copy.)

(This paper is here omitted, because heretofore copied at length in this record. See page 45.)

DEMURRER TO SECOND AMENDED AND SUPPLEMENTAL BILL.

(157) Filed May 4th, 1896.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA, AT RICHMOND,
IN EQUITY.

L. H. Hyer

vs.

Richmond Traction Company et als.

The demurrer of the defendants to the second amended and supplemental bill of complaint of the said L. H. Hyer.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint to be true in manner and form, as the said L. H. Hyer hath therein set forth and alleged, demur to the said bill, and say that the same is not sufficient in law; and, for causes of demurrer, the said defendants show:

I. That it appears, by the said L. H. Hyer's own showing on the face of his said bill, that under the Constitution and laws of the United States this honorable court, on the equity side thereof, hath no jurisdiction of, and can take no cognizance of, the matters and things in said bill set forth, but that the said matters and things alleged and set forth by the said L. H. Hyer in said bill are, under the Constitution and laws of the United States, within the sole and exclusive jurisdiction of the courts of law which have jurisdiction of the parties and the subject matter, and are competent to afford a plain, adequate and complete relief.

II. That it appears on the face of the said bill that this honorable court hath no jurisdiction of the said bill, (158) because the citizenship of the complainant and the several parties defendant, respectively, as shown by the

said bill, bar the jurisdiction of this honorable court, as declared by the Judiciary act and the acts of Congress, in amendment thereof, in such made and provided.

III. That it appears on the face of the bill that the complainant has a plain, complete and adequate remedy at law, if any he has.

IV. That the contract and agreement set forth in said bill as the sole cause of action of the said complainant is against public policy, and null and void; and no court of equity will enforce the same.

V. That the said bill of complaint is multifarious and defective for misjoinder of the other defendants with the defendant, P. B. Sheild, against whom alone the said L. H. Hyer has any cause of action, according to his own showing.

VII. That the said bill is demurrable upon its face, for the non-joinder as parties thereto of Wm. H. Duchay and the other associates of the said L. H. Hyer, who, according to his own showing, are jointly interested with said Hyer in the alleged cause of action set forth in his said bill.

VII. The plaintiff seeks to set aside the organization of the Richmond Traction Company and deny its powers as a corporation, which can only be accomplished by a writ of *quo warranto* filed in the Circuit Court of Richmond, Virginia, by the Attorney-General of the State.

VIII. The plaintiff claims one-half of the franchise and profits of the Richmond Traction Company, and at the same time prays this court to enjoin the exercise of the said franchise by the said company, and thus seeks to prevent the making of the profits he claims a share in

IX. The plaintiff seeks to have decreed his one-half of the franchise of the Richmond Traction Company, while he shows that he has never subscribed for one-half of its stock, or offered to so subscribe.

(159) X. The second amended bill of the complainant, Hyer, materially changes the very substance of his original bill, and is an attempt to make a new case.

Wherefore, and for divers other good causes of demurrer, appearing on the face of said bill, these defendants demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make any

answer to said bill; and they humbly pray to be hence dismissed, with their costs, in this behalf sustained.

JOHN L. WILLIAMS,
RICHMOND TRACTION COMPANY
AND OTHERS, Defendants, by Counsel.

We hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law, and should be sustained.

W. W. HENRY.
JAMES LYONS,

UNITED STATES OF AMERICA, }
Eastern District of Virginia, } To-wit:

John L. Williams, being duly sworn, *make* oath and say that *they are* defendants in this cause, and that the foregoing demurrer is not interposed for delay.

Subscribed and sworn to before me this 4th day of May, 1896, in my office at Richmond, Virginia, in said District.

HENRY FLEGENHEIMER,
U. S. Comr. East. District of Va.

OPINION OF THE COURT.

(160)

Filed August 5th, 1896.

This cause has been most elaborately and ably argued on the defendants' demurrer to the complainant's second amended and supplemental bill of complaint. Numerous grounds of demurrer are assigned, but considering them in the order in which they appear, it will only be necessary, in the view I take of this case, to dispose of the four first mentioned.

The first and second are in substance the same, in which the claim is made that this court has not jurisdiction in this controversy on account of the citizenship of the parties therein, and because of the provisions of the Constitution and laws of the United States relating to such matters. The claim is, in my judgment, without merit. I find that the court has jurisdiction of this controversy and of the parties; in fact, counsel for the defendants, in closing the arguments on the demurrer, virtually conceded the jurisdiction of the court, so far, at least, as the question of citizenship was concerned.

The third reason assigned is that the complainant has a plain, complete and adequate remedy at law, if any he has, against the defendants in the case made by the bills. I not concur with counsel for the defendants in the argu-

ment submitted on this point, and, so far as it is concerned, the demurrer must be overruled. In my judgment, in cases of this character, where specific performance is claimed, complete and adequate remedy can only be had in a court of equity.

The fourth reason assigned for the demurrer is that the contract and agreement set forth by the complainant as cause of action is null and void, because against public policy, and that, therefore, a court of equity should not enforce it. Counsel for complainant and defendants, with zeal highly commendable, have most successfully searched the books, and presented to the court all the authorities, I think, bearing upon this point from the earliest reports to the present time. I have carefully examined them, giving to the same much time and thought. While none of the cases cited are exactly similar to one I now consider, still many of them have points in common with it, and the reasoning of the courts in the able opinions referred to, by which the rule of law mentioned has now been well established, includes, in my judgment, contracts of the character set up and relied upon by the complainant. I think that the contract, the specific enforcement of which is the object of this suit, the intention of which was to withdraw competition from before the City Council of the city of Richmond, is void, because against public policy, and I shall, therefore, decline to enforce the same. Reaching this conclusion, it will be unnecessary to consider the remaining grounds of demurrer. A decree may be prepared *detaining* defendant's demurrer and dismissing complainant's bills.

My continued engagements on the circuit since this case was submitted, and the time necessarily required to examine the many authorities cited, have prevented the preparation and filing of an opinion covering the points decided, and I would delay the announcement of my conclusion in order that I might have time so to do were not for reasons plainly apparent the parties hereto, in which counsel evidently concur, most anxious for an early decision of the question raised by the demurrer. This case involves questions of great importance, not only to the complainant, but to the country at large, and its early decision by the court of last resort is desirable, not only because of the interests of the parties to the controversy, but also because the public is concerned in the early and proper adjustment of same. An appeal to the Circuit Court of Appeals for this circuit, if now promptly taken and perfected, can be heard and disposed of at the coming November term of that court.

NATHAN GOFF,
U. S. Circuit Judge.

August 5th, 1896.

(161) And at another day, to-wit: at a Circuit Court of the United States for the Eastern District of Virginia, held at Richmond, in said district, on the 22nd day of August, 1896, the following order was entered, to-wit:

ORDER OF COURT.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

L. H. Hyer, Plaintiff,	}
<i>vs.</i>	
Richmond Traction Company et als.,	
Defendants.	}

It is adjudged and ordered that the decree entered in this cause on the 6th day of April, 1896, actually amended the original bill filed in this cause, with amendments thereto made in pursuance of decrees in this cause entered prior to that day, and also the amended and supplemental bill filed in this cause in pursuance of the decree entered herein on the 1st day of February, 1896, as particularly set out and prayed in the petition of the complainant, L. H. Hyer, filed by said decree of April 6th, 1896, and that said original bill, with amendments thereto, and said amended and supplemental bill, stood actually amended from and after the 6th day of April, 1896, as above stated. But the complainant, for the sake of clearness, filed in the clerk's office of this court, at Richmond, Virginia, on the 18th day of April, 1896, a complete draft of the original bill in this cause as amended and as the same reads with all amendments allowed by this court up to the 18th day of April, 1896, and also a complete draft of the amended and supplemental bill filed in this cause by the complainant as amended and as the same reads with all amendments allowed by this court up to the 18th day of April, 1896, and said two bills so filed on the 18th day of April, 1896, were used and referred to by the court and counsel upon the argument hereafter mentioned, and copies of the same were delivered by the complainant to the defendants at the time the same were filed; and the defendants, on the 4th day of May, 1896, filed at the rules in the clerk's office of this court, at Richmond, Virginia, their demurrer to the amended and supplemental bill of the complainant as said bill was amended by the decree entered in this cause on the 6th day of April, 1896, and to said amended and supplemental bill, filed by the complainant, as aforesaid, on the 18th day of April, 1896, and this court, upon mo-

tion of the complainant in open court, set down said demurrer filed on the 4th day of May, 1896, for argument thereon, which argument was had before this court on the 5th, 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th and 15th days of May, 1896; and it now appearing that by inadvertence no decrees filing said two amended bills last above mentioned—that is to say, said bills filed April 18th, 1896, and setting down for argument the demurrer of the defendants filed on the 4th day of May, 1886, were signed and spread upon the order book of this court;

It is now adjudged and decreed *nunc pro tunc* that the said two amended bills of the complainant, filed as aforesaid in the clerk's office of this court, at Richmond, Virginia, on the 18th day of April, 1896, shall stand and be treated as filed in this court on the day last named by leave of court granted in the aforesaid decree of April 6th, 1896; and that the demurrer of the defendants filed at the rules on the 4th day of May, 1896, shall be treated as filed on that day; and that on motion of the complainant, L. H. Hyer, the demurrer filed by the defendants on the 4th day of May, 1896, was, on the 5th day of May, 1896, set down for argument before this court.

NATHAN GOFF,
U. S. Circuit Judge.

August 22d, 1896.

(162) And now at this day, to-wit: At a Circuit Court of the United States, in and for the Eastern District of Virginia, held at Richmond, in said district, on the 22nd day of August, 1896, the following order was duly entered of record in the above named cause, viz.:

FINAL DECREE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

L. H. Hyer, Plaintiff,	} In Equity.
<i>vs.</i>	
Richmond Traction Company et als.,	
Defendants.	

This cause having been argued before this court on the 5th, 6th, 7th, 8th, 9th, 11th, 12th, 13th, 14th and 15th days of May, 1896, upon the defendants' demurrer to the complainant's second amended and supplemental bill; (that is to say, the amended and supplemental bill as amended by the decree herein of April 6th, 1896, and in the form filed

on the 18th day of April, 1896), the court filed its opinion on the 5th day of August, 1896, hereby made a part of the record, holding that the first, second and third grounds of demurrer assigned by the defendant in their said demurrer are not well taken and must be overruled; that the fourth ground of demurrer assigned in the said demurrer is well taken and must be sustained, and that having reached the conclusion last stated, the six remaining grounds of demurrer assigned by the defendants would not be considered. Thereupon it is adjudged and decreed:

First. That the first, second and third grounds of demurrer assigned by the defendants in their demurrer filed May 4th, 1896, to the second amended and supplemental bill filed by the complainant, be and the same are hereby overruled.

Second. That the fourth ground of demurrer assigned by the defendants in said demurrer filed May 4th, 1896, be and the same is hereby sustained, and all bills filed by the complainant are, for this reason, hereby dismissed, with costs to the defendant, to be taxed by the clerk; and the remaining six grounds of demurrer assigned by the defendants are not considered or determined by the court.

NATHAN GOFF,
U. S. Circuit Judge.

August 22d, 1896.

PETITION FOR APPEAL.

(163)

Filed October 6th, 1896,

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA. IN THE
FOURTH JUDICIAL CIRCUIT.

L. H. Hyer, Plaintiff,	}	In Equity.
<i>vs.</i>		
Richmond Traction Company and others, Defendants.		

To the Honorable Judges of the Circuit Court of the
United States for the Eastern District of Virginia:

Your petitioner, L. H. Hyer, respectfully represents as follows:

1. That your petitioner is the complainant in this suit; that the Richmond Traction Company, John W. Middendorf, John L. Williams, John S. Williams, Everett Wad-

dey, R. Shereffs, P. B. Sheild, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton and Louis Euker were made defendants to the original bill filed herein; and that the same defendants and the Maryland Trust Company, a corporation, Ro. Lancaster Williams, William M. Habliston, Henry A. Parr and E. B. Addison were made defendants in the amended and supplemental bill filed herein by your petitioner.

2. Your petitioner, conceiving himself aggrieved by the decree made and entered in the said above entitled cause on the 22nd day of August, 1896, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Fourth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and your petitioner prays that this appeal may be allowed; that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fourth Circuit, and that said decree of August 22nd, 1896, may be reviewed and reversed by the said United States Circuit Court of Appeals.

And your petitioner prays for such further and general relief as may be proper in matters of this character; and your petitioner will ever pray, &c.

L. H. HYER.
by STILES & HOLLADAY.

STILES & HOLLADAY,
Solicitors for Petitioner, L. H. Hyer.

ASSIGNMENT OF ERRORS.

(164) Filed October 6th, 1896.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA, IN THE
FOURTH JUDICIAL CIRCUIT.

L. H. Hyer, Plaintiff,	}	In Equity.
<i>vs.</i>		
Richmond Traction Company and others,		
Defendants.		

Assignment of errors filed by L. H. Hyer with his petition for appeal in the above entitled cause from the decree rendered in said cause on the 22nd day of August, 1896.

And now, on this 6th day of October, 1896, came the petitioner, L. H. Hyer, plaintiff in the above entitled suit, by Stiles & Holladay, his solicitors, and says that the decree entered in the said cause on the 22nd day of August, 1896, dismissing all bills filed by the said L. H. Hyer in the above entitled cause, is erroneous and against the rights of the appellant, L. H. Hyer; and said petitioner, L. H. Hyer, appellant, assigns for error, and will contend, in the Appellate Court, that the court below erred as follows :

1.

First. That the court erred in sustaining the fourth ground of demurrer assigned by the defendants in their demurrer filed May 4th, 1896, and, for the reasons assigned in said fourth ground of demurrer, dismissing all bills filed by the complainant, L. H. Hyer. The said fourth ground of demurrer assigned by the defendants in said demurrer filed May 4th, 1896, is in the following words and figures, to-wit :

(165) The appellant, L. H. Hyer, respectfully submits and will contend in the Appellate Court that the contract and agreement set forth in his bills filed in this cause, and referred to in said demurrer, were and are perfectly valid and lawful in all respects; that said contract and agreement are in no manner contrary to public policy; that the court below erred in holding said contract and agreement to be contrary to public policy, and therefore null and void, and erred in declining to enforce specific performance of the said contract and agreement; and erred in dismissing the bills filed by L. H. Hyer, or either of them.

2.

Second. That the court erred in sustaining the demurrer filed by the defendants, and erred in dismissing all bills filed by the said L. H. Hyer, or either of them. The contract and agreement set out in the bills filed by the said L. H. Hyer state a plain case for relief in a court of equity; the court below should have overruled all demurrers filed by the defendants herein, and each and every ground of demurrer assigned by the defendants in their said demurrers, and should have retained jurisdiction of this suit and granted the relief prayed by the said L. H. Hyer in his said bills.

3

Third. That the court in dismissing the bills filed by the said L. H. Hyer in this cause, or either of them, for the reasons set out in the said decree herein of August 22nd, 1896, and the opinion of the court mentioned herein and made a part of the record; and erred in dismissing the said bills, or either of them, for any reason.

4.

Fourth. For these and other reasons appearing upon the record of said decree of August 22nd, 1896, your petitioner prays for an appeal from and supersedeas to said decree, and that the said decree may be reviewed and reversed.

L. H. HYER,
by STILES & HOLLADAY.

STILES & HOLLADAY,
Solicitors for Petitioner, L. H. Hyer.

ORDER ALLOWING APPEAL.

(166) Entered October 6th, 1896.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE
EASTERN DISTRICT OF VIRGINIA.

L. H. Hyer, Plaintiff,	} In Equity.
<i>vs.</i>	
Richmond Traction Company et als.,	
Defendants.	

This day came L. H. Hyer, plaintiff in the above styled cause, wherein the Richmond Traction Company and others are defendants, by Stiles & Holladay, his counsel, and filed his petition in writing, together with a written assignment of errors, praying an appeal from the final decree entered or rendered in the said above styled cause on the 22nd day of August, 1896. And now, on this 6th day of October, 1896, it is ordered and decreed by this court that an appeal be and the same is hereby allowed from the aforesaid final decree of August 22nd, 1896, entered or rendered in the said above styled cause—in accordance with the prayer contained in the aforesaid peti-

tion of the said L. H. Hyer. Bond, as required by law, in the penalty of \$1,000 to be given by said Hyer, or some one, or him, with good security.

NATHAN GOFF,

U. S. Circuit Judge.

BOND ON APPEAL.

(167) Filed and Approved Oct. 6th, 1896.

Know all men by these presents, that we, D. H. Brimmer, as principal, and the Virginia Trust Company, a corporation duly incorporated and organized under the laws of the State of Virginia, as surety, are held and firmly bound unto the Richmond Traction Company, John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Sheild, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee; A. B. Guigon, Edmund Pendleton, Louis Euker, The Maryland Trust Company, Ro. Lancaster Williams, Wm. M. Habliston, Henry A. Parr, and E. B. Addison, defendants, in the full and just sum of one thousand dollars, to be paid to the said parties above named as defendants, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this sixth day of October, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at a Circuit Court of the United States for the Eastern District of Virginia, in a suit depending in said court between L. H. Hyer, as complainant, and the said parties above named as defendants, a decree was rendered against the said complainant, L. H. Hyer, on the 22nd day of August, 1896, the said suit being a suit in equity; and the said L. H. Hyer having obtained an appeal and filed a copy thereof in the Clerk's Office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said parties herein above named as defendants, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond on the day in the said citation mentioned.

Now, the condition of the above obligation is such that, if the said L. H. Hyer shall prosecute said appeal to effect, and answer all damages and costs, if he fails to make

his plea good, then the above obligation to be void, else to remain in full force and virtue.

D. H. BRIMMER,
By ADDISON L. HOLLADAY, [Seal.]
His Attorney in fact, under power
of attorney herewith filed.
VIRGINIA TRUST COMPANY,
By A. L. HOLLADAY,
Its Attorney in fact, under power
of attorney herewith filed.

Approved—

NATHAN GOFF,
U. S. Circuit Judge.
October 6th, 1896.

STATE OF VIRGINIA, }
City of Richmond. } To-wit:

(168) I, W. W. Gosden, a notary public for the city of Richmond, in the State of Virginia, do hereby certify that Mann S. Quarles, whose name as vice-president of the Virginia Trust Company, and by whom the name of said company is signed to the writing above, bearing date on the 5th day of October, 1896, has this day acknowledged the same before me, in my city aforesaid, as the act and deed of said Virginia Trust Company, and the said Mann S. Quarles also made oath before me that he is the vice-president and chief executive officer of said company, and that the said Virginia Trust Company has a capital and surplus over and above all its liabilities of more than \$500,000.

Given under my hand this 5th day of October, 1896.

W. W. GOSDEN,
Notary Public.

POWER OF ATTORNEY FILED WITH FOREGOING BOND.

(169) Know all men by these presents, that the Virginia Trust Company, a corporation duly incorporated and organized under the laws of the State of Virginia, doth hereby constitute and appoint Addison L. Holladay its true and lawful attorney in fact for the said company, to appear before the United States Circuit Court for the Eastern District of Virginia, or before any Judge of the said court, either in term time or in vacation, and to execute and to acknowledge, for the said Virginia Trust Company, and in

its name as surety, such bond and in such form and penalty as may be required by the aforesaid court, or any judge thereof, upon granting or allowing to L. H. Hyer an appeal or an appeal and supersedeas in the cause of L. H. Hyer, plaintiff, against Richmond Traction Company et als., defendants, from a decree entered in the said cause by the said court on the 22nd day of August, 1896, and from any decree entered by the said court in the said cause; provided, however, that the penalty of the said bond shall not exceed the amount of one thousand dollars: our said attorney being hereby authorized to execute said bond in our name as surety for the said L. H. Hyer, or for such person as may execute such bond as principal for and in place of the said L. H. Hyer. And the said attorney is hereby authorized to affix the corporate seal of this company to such bond.

{ Seal. }

In witness whereof, the said Virginia Trust Company has hereto set its name and hereto affixed its corporate seal, this 5th day of October, 1896.

VIRGINIA TRUST COMPANY,
MANN S. QUARLES,

Vice-President.

Attest:

JNO. MORTON,

Secretary.

POWER OF ATTORNEY FILED WITH FOREGOING BOND.

(170) Know all men by these presents, that I, D. H. Brimmer, of Richmond, Va., do hereby constitute and appoint Addison L. Holladay, of Hanover county, in said State, my true and lawful attorney in fact for me to appear before the United States Circuit Court for the Eastern District of Virginia, or before any judge of the said court, either in term time or in vacation, and to execute and acknowledge for me, and in my name as principal, such bond and in such form and penalty as may be required by the aforesaid court, or any judge thereof, upon granting or allowing to L. H. Hyer an appeal, or appeal and supersedeas, in the cause of L. H. Hyer, complainant, against Richmond Traction Company and others, defendants, from a decree entered in the said cause by the said court, on the 22d day of August, 1896, and from any decree entered by the said court in the said cause; provided, however, that the penalty of the said bond shall not exceed the sum of one thousand dollars.

Given under my hand and seal this, the fifth (5th),
1896.

D. H. BRIMMER, [Seal.]

STATE OF VIRGINIA, }
City of Richmond. } To-wit:

I, Louis J. Heindl, a Notary Public for the City of Richmond, in the State of Virginia, do hereby certify that D. H. Brimmer, whose name is signed to the writing hereto annexed, bearing date on the fifth (5th) day of October, 1896, has acknowledged the same before me, in my city aforesaid.

Given under my hand this, the 5th day of October,
1896.

LOUIS J. HEINDL,
Notary Public.

(171) CITATION.

UNITED STATES OF AMERICA, } ss:

The President of the United States, To the Richmond Traction Company, John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, R. Shereffs, P. B. Sheild, Charles T. Child, W. F. Jenkins, W. F. Jenkins, trustee, A. B. Guigon, Edmund Pendleton, Louis Euker, the Maryland Trust Company, Ro. Lancaster Williams, Wm. M. Habliston, Henry A. Parr and E. B. Addison—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond on the 3d day of November next, pursuant to an appeal from a decree of the Circuit Court of the United States for the Eastern District of Virginia in your favor passed in a cause in said court, wherein L. H. Hyer is complainant and you are defendants, to show cause, if any there be, why the decree rendered against the said complainant, L. H. Hyer, in said caused mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, this 6th day of October, in the year of our Lord one thousand eight hundred and ninety-six.

NATHAN GOFF,
Judge U. S. Circuit Court 4th Circuit.

Legal service of the within summons is acknowledged.
October 9, 1896.

THE RICHMOND TRACTION COMPANY,
JOHN L. WILLIAMS,
JOHN S. WILLIAMS,
EVERETT WADDEY,
RO. LANCASTER WILLIAMS,
WM. M. HABLSTON,

By W. W. HENRY,
Their Attorney.

LOUIS EUKER,
R. SHERIFFS, &
A. B. GUIGON,

By PEGRAM & STRINGFELLOW.
CHARLES T. CHILD.
W. F. JENKINS.
W. F. JENKINS, Trustee.
E. B. ADDISON.
EDMUND PENDLETON.
PHIL. B. SHEILD.

Octo. 13th, '96.

(172) Baltimore, October 13th, 1896.

We hereby admit service of the within summons and
citation upon us.

JOHN W. MIDDENDORF.
MARYLAND TRUST COMPANY.

By J. BERNARD SCOTT, Secretary.
H. A. PARR.

SHUMAKER & WHITELOCK,

(173) Solicitors for above named parties.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA. }
Eastern District of Virginia, } ss:

L. H. Hyer, Plaintiff,

vs.

Richmond Traction Company }
et als., Defendants. } In Equity.

I, M. F. Pleasants, Clerk of the United States Cir-

cuit Court in and for the Eastern District of Virginia, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the cause in the caption named, with the exception of the subpoena, which has been lost from the files, as the same remains on the files of my office.

{ Seal
of the
Court. }

In testimony whereof, I have this day set my hand and affixed the seal of said court, at Richmond, in said district, this 26th day of October, A. D. 1896.

M. F. PLEASANTS, Clerk.



**PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF
APPEALS, FOURTH CIRCUIT.**

No. 198.

L. H. Hyer, Appellant,	}	Appeal from the Circuit
<i>vs.</i>		Court of the United States
Richmond Traction Company		for the Eastern District of
et al., Appellees.		Virginia, Richmond.

October 27, 1896, Transcript of Record filed.

Same day appearance of Stiles and Holladay, Esquires,
for the appellant.

Same day appearance of W. Wirt Henry and George
Whitelock, Esquires, for the appellees.

November 21, 1896, cause continued.

December 24, 1896, 20 copies of the printed record
filed.

February 8, 1897, (February term 1897,) cause came
on to be heard on the transcript of the record, and was argu-
ed by counsel and submitted.

At the May term, 1897, to-wit: May 12, 1897, the
court made and entered the following order:

ORDER FOR ADDITIONAL BRIEFS

UNITED STATES CIRCUIT COURT OF APPEALS.

FOURTH CIRCUIT.

No. 198.

L. H. Hyer, Appellant,	}	Appeal from the Circuit
<i>vs.</i>		Court of the United States
Richmond Traction Company,		for the Eastern District of
et al., Appellees.		Virginia, at Richmond.

Per curiam:

Counsel in this case are requested to furnish the court
with briefs directed to the question whether the complain-
ant below has not a plain, adequate and complete remedy
at law, if any he has, with leave to add such additional ob-
servations on the case generally as they may be advised.

Let the brief on the part of appellant be filed and
served on appellee within thirty days from the date hereof,
and let appellee reply within twenty days thereafter, and
let appellant file reply brief within ten days after service
of appellee's brief.

CHARLES H. SIMONTON,

May 12, 1897.

Circuit Judge.

At the same term, to-wit: May 14, 1897, order for additional briefs rescinded, and the court announced and filed its opinion, Judge Brawley dissenting, which is as follows, to-wit:

OPINION.

UNITED STATES CIRCUIT COURT OF APPEALS. FOURTH CIRCUIT.

No. 198.

L. H. Hyer, Appellant,	}	Appeal from the Circuit Court of the United States for the Eastern District of Virginia, and Fourth Judicial Circuit, at Richmond, Virginia.
<i>versus</i>		
Richmond Traction Company	}	
et als., Appellees.		

Before Mr. Chief-Justice FULLER, SIMONSON, Circuit Judge, and BRAWLEY, District Judge.

[Argued February 9, 1897. Decided May 14, 1897.]

ROBERT STILES and A. L. HOLLADAY, for Appellant; W. WIRT HENRY and GEORGE WHITELOCK, for Appellees.

STATEMENT.

This case comes up on appeal from the Circuit Court of the United States for the Eastern District of Virginia.

The cause was heard below upon demurrer to the bill. The bill states, in substance, the following facts:

The complainant is a civil engineer who has been engaged in promoting and constructing street railways in various cities of the United States. His attention was attracted to the city of Richmond as a promising field for his enterprise, and, having secured the assurance of assistance from capitalists, he made application to the City Council of that city for the franchise of a street railway through Broad street. He succeeded in obtaining an ordinance granting him this franchise for a company to be called the Richmond Conduit Railway Company. But the ordinance as it finally passed did not contain certain terms which he had asked for and had deemed essential. He therefore asked amendments and modifications of the ordi-

nance, and received assurances from prominent officials that the desired amendments would be made, provided that a deposit of \$10,000, as a guarantee of good faith, should be made in one of the banks of Richmond. This deposit was, in fact, made by him on 17th July, 1895, and shortly thereafter he went to New York to obtain from the capitalists who were at his back the financial assistance he required.

Whilst he was engaged in these efforts to secure his franchise and to amend the ordinance, he was aware that he had active competition from other parties, who sought the same franchise for the Richmond Traction Company. This competition was led by one P. B. Shield, a lawyer in Richmond. These competitors, however, had no communication with each other prior to the departure of complainant for New York, and, indeed, there was no personal acquaintance between them. The complainant regarded himself as having altogether the inside track, and appeared to himself to be master of the situation. Stewart & Co., of New York, were the capitalists on whose assistance complainant relied. When he left Richmond and went to New York, as above stated, he called at the office of Stewart & Co., to complete his negotiations with them, and found that P. B. Shield was at that moment in private conference with the head of the firm, S. H. G. Stewart. During the day Shield and the complainant separately had interviews with Mr. S. H. G. Stewart, and finally Mr. Stewart, after telling the complainant that Shield's purpose was to get some recognition for the promoters of the Richmond Traction Company at the hands of the promoters of the Richmond Conduit Company, advised complainant to do so. He urged that the rivalry between the Conduit Company and your orator and his associates, on the one hand, and the Traction people and the said P. B. Shield and his associates, on the other hand, and antagonism of this character, would probably result in the defeat of both their schemes, or the passage of the franchise in favor of one of the two competitors loaded with such onerous and exacting conditions that no capitalist could be induced to put money in the enterprise, and he, therefore, urged complainant to shake hands with said Shield, to unite forces with him upon one of the two ordinances—the Conduit ordinance or the Traction ordinance—and thus to secure and share the fruits of victory, instead of the disappointment and bitterness of defeat.

The advice of Mr. Stewart was accepted. The late rivals became allies. They met in conference in New York, came to a full understanding, and, as its result, embodied their agreement in a letter to Mr. S. H. G. Stewart :

"New York, August 9th, 1895.

"S. H. G. Stewart, Esq.,

"40 Wall Street, City.

"Dear Sir,—We, the undersigned, L. H. Hyer, of Washington, D. C., and Phil. B. Shield, of Richmond, Va., have this day entered into the following agreement: That both of us being interested in the procuring of a franchise for and the construction of a street railway on Broad street, in the city of Richmond, Virginia, with collateral lines, have made the following agreement: That we hereby bind ourselves, in our own behalf and for our associates, mutually to co-operate one with the other in securing a franchise for said railway and to divide equally between us and our associates whatever may be realized from the enterprise, first deducting from said amount whatever actual expenses may have been incurred by either side, such expenses to be paid out of the first money realized from said enterprise.

"It is further agreed between us that the deposit already made with the State Bank of Richmond, in Richmond, Virginia, by Mr. L. H. Hyer or his associates, is to stand and remain intact as it now is for the purpose of securing the franchise aforesaid, subject to any conditions for the withdrawal thereof made by Mr. Hyer with the depositor after the seventeenth day of August, 1895; and further, it is agreed that the application and franchise to be presented to the Common Council of the City of Richmond shall be that of the Richmond Traction Company, for the building of an overhead trolley railway or cable system.

"Among ourselves we will decide what names are proper to be used in the franchise and the policy we will use in procuring the same.

"Yours very respectfully,

"(Signed) L. H. HYER,

"(Signed) PHIL. B. SHEILD."

The bill alleges that Shield was the agent of and acted for all the promoters of the Richmond Traction Company, who were such at the date of this complaint. And that all persons who have come into the enterprise since that date, having received the benefit of the contract, are also bound by it.

This contract having been made, all efforts to perfect the ordinance granting franchises to the Richmond Conduit Company ceased, the ordinance was withdrawn and an ordinance was passed authorizing the construction and operation of a street railway within the limits of the City

Richmond, by the Richmond Traction Company. Shield broke off all relations with the complainant after he had obtained this contract and sold his interest in the enterprise to certain financiers in Richmond. The ordinance granted the franchise to the Richmond Traction Company, composed of John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, Reuben Shereffs, Philip B. Shield, Charles T. Child and W. F. Jenkins. The ordinance was passed on 26th August, 1895. The complainant on the afternoon of that day caused to be published a notice in the Richmond *State* newspaper of the nature and character of his claim on the franchise of the Traction Company, that is to say, that he was entitled to one-half thereof when it was granted, in consideration of the fact that he had caused the withdrawal of the Richmond Conduit Company's application for franchises in favor of the Traction Company. This notice, either because it was too late or for some other reason, did not affect or stop the action of the Richmond Council. He also gave notice to each of the persons named in the ordinance of his contract with Shield and his claim thereunder. Upon taking this franchise for the Richmond Traction Company, the persons named in the ordinance undertook to form a corporation and issue shares of stock with a capital of \$300,000, with full notice or means of notice of complainant's rights in the premises. That said corporation was not formed in accordance with the laws of Virginia in such case made and provided. That notwithstanding they selected a board of directors, all of whom but one, A. B. Addison, had notice of complainant's rights and claims. And that the directors determined to execute and did, in fact, execute a mortgage to the Maryland Trust Company, of all the franchise and property of said Traction Company, to secure five hundred bonds of one thousand dollars each, but that said mortgage itself is void as not executed by lawful authority or in accord with the laws of Virginia in such case made and provided.

The complainant after filing his original bill craved and obtained leave to file amended and supplemental bills. The prayer of the original bill is as follows:

"That each and all of said parties defendant, their agents and servants, be enjoined and restrained from transferring or encumbering the franchise or property of the said Richmond Traction Company, or any part thereof, or any interest therein, or from issuing any stock or bonds of said company, or in any other way borrowing money for the use of said company upon its franchise or property; that your orator may be decreed by this Honorable Court

to have valid right and claim to a full one-half interest in and under said contract of August 9th; and, upon the basis of said contract, to have such right and claim to a full one-half interest in the said Richmond Traction Company's franchise, enterprise, property and stock; that specific execution of said contract be decreed your orator and enforced under the power and process of the court; that all parties defendant be required and compelled by the process of the court to do and perform every act which may be requisite and necessary to the vesting of your orator's full rights in the premises."

The amended bill prays that this prayer of the original bill may be read, treated and granted as if again fully repeated, and further prays that the so-called subscription to the capital stock of the Richmond Traction Company be declared illegal, null and void; that the script issued be called in and cancelled; that the organization of the company based thereon be declared illegal, null and void, and vacated. That all transactions at any meetings of the so-called stockholders and directors be declared null and void, especially the authorization, execution and issue of the bonds and the mortgage to the Maryland Trust Company of Baltimore, and that all the bonds be called in and cancelled. That all the stockholders and directors who participated in these matters, except Addison, be declared wrong-doers, conspiring to hinder, delay and defraud complainant, and liable in damages to him for all losses he may suffer in the premises. That they be required to do whatever may be necessary to discharge the Richmond Traction Company and franchise from the consequences of the organization of the said company and from all contracts, debts and liabilities contracted in the name of said company. That the Maryland Trust Company be enjoined from acting as trustee under the mortgage, and from authenticating any of the bonds, or issuing, delivering or selling the same to any one, and from paying over to any one proceeds of sale of any bonds heretofore sold. And "that the said Richmond Traction Company, its officers, directors and all others, acting, or purporting to act, in its name, may be enjoined and restrained from entering into any contract or incurring any debt or liability in the name of the said Richmond Traction Company, or exercising any of the rights, powers, functions or privileges of the Richmond Traction Company; that a receiver may be appointed, pending the determination of this cause, to take charge of all of the aforesaid bonds, of all the proceeds from the sale of such of them as may have been sold or otherwise disposed of, and of all the property and assets

of the said Richmond Traction Company of every character and wherever situated; and that all proper inquiries may be made, accounts taken and decrees entered; and your orator further prays that he may have and be granted such other, further, general and complete relief as may be agreeable to equity and the nature of his case."

The defendants demurred to the bill, setting forth nine grounds of demurrer. The first and third go to the jurisdiction of a court of equity, in that complainant has a plain, adequate and complete remedy at law. The second denies the jurisdiction because of the citizenship of the parties. These three grounds the court below overruled. The fourth ground is as follows:

"IV. That the contract and agreement set forth in said bill as the sole cause of action of said complainant is against public policy and null and void, and no court of equity will enforce the same."

This ground of demurrer the court below sustained, and thereupon dismissed the bill, the remaining six grounds of demurrer assigned by the defendants not being considered or determined by the court. Leave was granted to complainant to appeal, and the cause is here on assignments of error.

The first assignment of error goes to the ruling of the court below, that the contract sued upon is void as contrary to public policy.

The second assignment of error asserts error in the court in not overruling all the grounds of demurrer filed by defendants, and in not granting the relief prayed.

The third and fourth are too general and vague and will not be regarded.

SIMONTOX, Circuit Judge:

The question in this case is: Is the contract set forth in the bill as the sole cause of action such a contract as a court of equity will enforce?

There were two competitors before the Municipal Authorities of Richmond, each seeking for himself, upon the best terms he could, the grant of a street railway franchise. Apparently both of them were promoters, that is to say, were without sufficient capital themselves, depending upon securing the aid, co-operation or purchase of capitalists. The competition evidently was bitter and hostile, for the competitors had no communication whatever with each other. The complainant was satisfied that he had "the inside track" and was "master of the situation." With this high hope and encouragement he sought his capitalist in New York to obtain the fruition of his efforts. There

he unexpectedly meets his rival in close conference with the capitalist. Under the advice of this capitalist he lays aside his rivalry and the competitors become allies, and all competition between them ceases. The reasons which induced him were that the antagonism would probably result in the defeat of both, or that before the franchise was obtained it would be loaded with such onerous and exacting conditions that no capitalist could be induced to put money in the enterprise. The result of the advice was the contract in question. By this contract complainant and his rival joined hands, withdrew all competition, agreed to co-operate in securing a franchise for a street railway from the municipal authorities of Richmond and to divide whatever was realized from the enterprise, first deducting expenses incurred by either side. They agreed to use, so far as it went, the advantage of complainant's deposit in a Richmond Bank; and the franchise to be asked for was that of the Richmond Traction Company for the building of an overhead trolley railway or cable system. Adding these words: "among ourselves we will decide what names are proper to be used in the franchise and the policy we will use in procuring the same."

The effect of this reconciliation of interests was to prevent all competition between the rival promoters, to shut off, as far as they could, all possible competition from others, which might result in the defeat of both, and to avoid the imposition of conditions by the municipal authorities, which the promoters, and especially capitalists, might consider onerous and exacting. The Circuit Court which tried the case was of the opinion that the contract was against public policy.

A text writer (Greenhood) states the rule to be this:

"Any agreement which in its object or nature is calculated to diminish competition for the obtainment of a public or *quasi* public contract to the detriment of the public or those awarding the contract is void." (Greenhood on Public Policy, p. 178, Rule CLXXII.)

In *Pingrey vs. Washburn*, 1 Aiken (Vt.), 264, the court held that an agreement on the part of a corporation to grant to individuals certain privileges in consideration that they will withdraw their opposition to the passage of a legislative act touching the interests of the corporation is void as against public policy and prejudicial to correct and just legislation.

In *Hunter vs. Nolf*, 71 Penn. St., 282, a contract between two candidates for the office of United States Assessor that one should withdraw, and if the other were appointed, they should divide profits, was recognized and

treated as against public policy and void. To the same effect is *Meguire vs. Corvine*, 11 Otto, 108.

In *Smith vs. Applegate*, 3 Zab. (N. J.), 352, a note given to a person in consideration that he withdrew all opposition to the opening of a road was held void for the same reason.

The Supreme Court of Massachusetts in *Gibbs vs. Smith*, 115 Mass., 592, clearly marks the line in an analogous case. "An agreement between two or more persons that one shall bid for all upon property about to be sold at public auction, which they desire to purchase together, either because they intend to hold it together or afterwards to divide it into such parts as they individually wish to hold, neither desiring the whole, or for any similar honest or reasonable purpose, is legal in its character and will be enforced. But such an agreement, if made for the purpose of preventing competition and reducing the price of the property to be sold below its fair price, is against public policy and void."

A citation and examination of the very many cases on this fruitful subject would run this opinion, already too long, into an unreasonable length.

Any effort which stifles competition or prevents fair and reasonable price for property is against public policy; especially is this the case when the property is a public, or *quasi* public, franchise. In the case at bar there were two bidders before the municipal authorities of Richmond for the franchise of a street railway. Naturally and normally that competitor would receive the franchise who made the greatest concession for the public welfare. The competition was active. Its tendency was to promote the public interest. It was withdrawn by the coming together of the parties, who agreed to abandon it for fear that they would neutralize each other, and also for fear that the passage of the franchise in favor of one of the two competitors would be loaded with such onerous and exacting conditions that no capitalist could be induced to put his money in it. In other words, the competition would induce great and extraordinary concessions for the public good; to prevent this it was abandoned. Among themselves they would decide what names to be used in procuring the franchise and the policy to be used in procuring it. That is to say, there being but one contractor in the field, the promoters themselves could, in the absence of competition, decide to whom the contract could be awarded, and could, in some measure, dictate the terms and concessions to be used in procuring the franchise.

"The true inquiry is, Is it the natural tendency of

such an agreement to injuriously influence the public interests? The rule is that agreements which, in their necessary operation upon the action of the parties to them, tend to restrain their natural rivalry and competition, and thus to result in the disadvantage of the public or third parties, are against the principles of sound public policy, and are void." *Atchison vs. Mullen*, 43 New York, 147.

The conclusion is not unreasonable that the contract was against public policy and void.

But it is contended that, if this be admitted, the complainant is still protected by the doctrine laid down in *Brooks vs. Martin*, 2 Wall., 80, recognized in *Farley vs. Hill*, 150 U. S., 576, and in the dissenting opinion in *Burck vs. Taylor*, 152 U. S., 668; *Armstrong vs. American Exchange Bank*, 133 U. S., 467. The principle decided in these cases is:

"When several persons enter into an illegal contract for their own benefit and the illegal transaction has been consummated and the proceeds of the enterprise have been actually received and carried to the credit of one of such parties, so that he can maintain an action therefor without requiring the aid of the illegal transaction to establish his case, he may be entitled to relief." (*McCrary, J.*, in *Cook vs. Sherman*, 20 Fed. Rep., 170. See also *Jackson vs. McLean*, 36 Fed. Rep., 217.) This construction by Judge McCrary is sustained upon examining the case of *McBlair vs. Gibbes*, 17 Howard, 233, which is the leading case on which this principle depends. In that case, and in all the quotations cited to support it, the cause of action was not the illegal transaction, the void act, but a subsequent independent contract which the law raised. The difference is between enforcing illegal contracts and asserting title to money derived from them. *Tenant vs. Elliott*, 1 Bos. & Pull., 3; *Farmer vs. Russell*, *Idem.*, 296; *Thomson vs. Thomson*, 7 Vesey, Jr., 473; all cited and approved in *McBlair vs. Gibbes*, *supra*. Sir William Grant, in the case in 7 Vesey, Jr., clearly states the principle. In that case there had been a sale of the command of an East India ship to the defendant. This was an illegal transaction. In consideration of the sale he had agreed to pay an annuity of £200 to the previous commander, from whom he purchased, so long as he remained in command. Defendant, after remaining in command for some time, retired, and secured the retiring allowance of £3,540. The bill was filed to get a decree enforcing the contract and investing so much of this as would produce £200 per annum. The objection was made that the contract providing for the annuity was illegal, and a court of equity

would not enforce it. The distinguished Master of the Rolls held the contract illegal. He recognized the equity in the fund, if it could be reached by a legal agreement, but there was no claim on the money, except through the medium of an illegal agreement, which, according to the determinations, cannot be supported. "How, then," says he, "are you to get at it except through this agreement? There is nothing collateral, in respect of which, the agreement being out of the question, a collateral demand arises."

In the case at bar the entire cause of action is on the agreement, which is void through public policy. The complainant depends altogether upon that agreement, and seeks to set aside everything that has been done and to enforce the specific performance of that agreement. He asks the court "to enforce this illegal contract and requires the aid of the illegal transaction to establish his case."

It follows that the contract under consideration can neither be enforced nor made the basis of any relief in a court of equity. The maxim in *pari delicto* applies. The court will leave the parties to such a contract precisely where it finds them. "Courts cannot be made the handmaids of iniquity." *Bank of the United States vs. Owens*, 2 Peters, 539.

It is urged, however, that the complainant, on the very afternoon of the day on which the City Council gave the franchise, exposed his agreement with Shield in a public print. Assuming that this was seen by the members of Council, it cannot avail him. The wrong complained of is not that he concealed his contract, but that he made the contract; not that he pretended still to seek a franchise, but that he sold himself out, and, doing so, defeated competition, shut the City Council in to but one bidder, deprived the public of that contention among bidders which would protect the public from loss and secure the highest price for the sale of the franchise.

This is not a case in which a court of equity should interfere, and the decree of the Circuit Court should be affirmed, without prejudice, however, to any right which complainant may have to seek relief, if any he be entitled to, in a court of law.

The Chief Justice concurred in the result, on the ground that the remedy of the complainant, if any, was at law.

In this conclusion, also, SIMONSON, J., concurred.

BRAWLEY, District Judge :

I dissent. Hyer and Shield were rival promoters, each seeking from the City Council of Richmond a franchise for a street railway on Broad street, and both looked to Stewart, a banker in New York, for the money to carry out the enterprise.

Hyer had already obtained a franchise from the Council, and was asking for some amendments thereto. Stewart, fearing that the continued rivalry might result in the defeat of both or in the obtaining of a franchise of such nature that capital would not embark in it, advised the parties to come together, and they united in an agreement for mutual co-operation and for an equal division of whatever profits were realized. The agreement does not on its face bear any of the *indicia* which mark a dishonest purpose. It does not show, nor can it be reasonably inferred, that any sinister, extraneous or corrupting influences were to be brought to bear upon the City Council of Richmond to superinduce the granting of the franchise, nor is it alleged that any improper means were to be used to accomplish it, and thus it is clearly distinguished from all that class of cases where the courts have held contracts void as reeking with corruption, such as using official influence for private gain, securing public office for pay, retiring from competitive candidacy under agreements to divide fees, securing public contracts upon like terms, or bargains for lobbying services to influence legislation. None of those elements enter here, and the sole ground upon which the decision rests is that the agreement was calculated to diminish competition for the obtaining of the franchise.

It is not contended, nor can it be assumed, that Hyer or Shield, either or both, had such control or monopoly of the building of street railways that they could by combination put up the price or demand an unusual or unreasonable franchise or embarrass the city of Richmond, and thus injure or jeopardize the public interest, either by their action or non-action. A rule that might be justly applicable to a kind of business which could not be restrained to any extent whatever without prejudice to the public interest ought not to be arbitrarily extended so as to interfere with that freedom of contract which is a fundamental right.

The franchise in question was not a thing that was put up at public auction and bound to go to the lowest bidder, where a combination to chill the bidding might be held to be in contravention of the public interest. The City Council of Richmond, faithful, as it must be assumed, to

its obligations to the public, was not bound to give the franchise to this or any other combination except upon such terms as it chose to annex, and there was no agreement for any corrupting influences to affect its action. An honest co-operation between two parties to effect an object which neither could accomplish by itself is not forbidden, although, in a sense, that might tend to lessen competition. There is a competition that kills, as there is a combination that saves. Competition in itself is not invariably a public benefit, and to hold a contract void because its tendency may be to defeat competition it must appear that the benefit to be derived from it is certain and substantial, and not theoretical and problematical. The rivalry of impecunious promoters in the obtaining of a franchise for an important public work requiring large capital for its fulfilment is not of such certain advantage to the public that the law should be invoked to prevent its suppression. When such men discover a field where capital can be profitably employed, and, seeking its aid at the same source, are informed that the money necessary to develop it can only be obtained upon the condition of their joint co-operation, and they voluntarily combine in furtherance of the enterprise, there can be no objection to it if it is done honestly and in good faith. Unless such a contract, either on its face or viewed in the light of the circumstances surrounding it, clearly discloses the fact that improper means and influences are to be used to accomplish the desired end, it should be sustained. "If there is one thing," says Sir George Jessel in a recent case, "which, more than another, public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by courts of justice."

All presumptions are in favor of the legality of contracts—all reasonable intendments are indulged to support them—if capable of a construction that will uphold and make them valid, they are not to be held illegal unless the circumstances are so strong and pregnant that no other reasonable conclusion can be drawn from them, for intention to violate the law is not to be presumed.

The extent to which the doctrine of invalidating contracts of this nature may be safely carried is not clearly defined and there is no immutable standard by which this rule is to be tested. Within it are clearly embraced all cases of fraudulent acts and all combinations having for their object the stifling of fair competition at biddings with the design to become purchasers at a price less than the fair value of the property, but combinations for mutual

convenience with a view to enable parties to do in common what neither could do individually and which do not disclose a dishonest purpose are as clearly not within the rule.

Courts must determine each case according to its peculiar facts and circumstances and can only determine rightly when those circumstances are considered in their relation to the reason and grounds of the rule.

In *Atcheson vs. Mallon*, 43 N. Y., 147, the case cited in support of the adverse view, Justice Folger says: "But a joint proposal, the result of honest co-operation, though it might prevent the rivalry of the parties and thus lessen competition, is not an act forbidden by public policy. Joint adventures are allowed. They are public and avowed and not secret. The risk as well as the profit is joint and openly assumed. The public may obtain at least the benefit of the joint responsibility and of the joint ability to do the service. The public agents know then all that there is in the transaction, and can more justly estimate the motives of the bidders and weigh the merits of the bid."

That Hyer and Shield had made this agreement was no secret. The fact was published in the newspapers in Richmond on the afternoon before the City Council passed the ordinance granting the franchise, and we have no complaint from that city, from the party supposed to be injuriously affected, that the suppression of competition has induced the granting of a franchise not duly regardful of the public interests. The bill states that it was Hyer's intention to lay the whole matter of this agreement before the City Council, and there is no ground for the suspicion that there was any concealment. I have not thought it necessary to consider carefully the effect upon this contract of the rule stated by Lord Cottenham in *Sharp vs. Taylor* and approved in *McBlair vs. Gibbes* and *Brooks vs. Martin*, and other cases in this country, although I am inclined to the opinion that the doctrine there announced is directly applicable. Here the contract to obtain the franchise which is held to be illegal has been consummated, the franchise has been obtained, the aid of the court is not sought to enforce it nor can the franchise be in any manner affected by what it may do; the transaction alleged to be illegal is completed and closed, one of the parties is in possession of all the fruits and the other seems to me to be entitled to recover in an appropriate action his share of the realized profits.

Public policy requires that men should perform their contracts, and they ought not to be allowed to evade their obligation upon vague and shadowy grounds. If this were a proceeding on the part of the City of Richmond to vacate the charter on the ground that it was obtained by any

corrupt practices or by the suppression of fair competition, the court should lend attentive ear to every suggestion of improper conduct on the part of the promoters, but the judicial conscience should not be awakened for the protection of one who seeks to avoid a contract of his own seeking on the ground that it was immoral, and, therefore, that he has the right to make off with the swag.

Those who have legitimately invested their brains and capital in this enterprise of public utility should not be harassed by the injunctions and other processes which would impede its successful consummation, but the plaintiff is, in my opinion, entitled to an accounting and to a share of the profits realized by his co-promoter, and the bill limited in its scope to that object should be retained.

At the same term, to-wit: May 14, 1897, the court here made and entered the following decree, to-wit:

DECREE

UNITED STATES CIRCUIT COURT OF APPEALS.

FOURTH CIRCUIT.

No. 198.

L. H. Hyer, Appellant,	}	Appeal from the Circuit Court of the United States for the Eastern District of Virginia.
<i>vs.</i>		
Richmond Traction Company et al., Appellees.	}	

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said Circuit Court in this cause, be, and the same is hereby, affirmed, without prejudice, with costs.

It is further ordered that the mandate of the court issue after the expiration of twenty days from the date hereof.

CHARLES H. SIMONTON,
Circuit Judge.

May 14, 1897.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA. }

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

{ Seal of the Court } In testimony whereof I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond this 21 day of May, A. D., 1897.

HENRY T. MELONEY,
Clerk U. S. Cir. Ct. Appeals, Fourth Circuit.

147 UNITED STATES OF AMERICA, 88 :

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fourth circuit, Greeting :

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which L. H. Hyer is appellant and The Richmond Traction Company *et al.* are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the eastern district of Virginia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court

of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

149 [Endorsed:] Supreme Court of the United States. No. 813. October term, 1896. L. H. Hyer *vs.* The Richmond Traction Company *et al.* Writ of certiorari. The execution of the within writ appears by the schedules hereunto annexed. H. T. Meloney, cl'k U. S. ct. et. appeals, 4th circuit.

150-165 In the United States Circuit Court of Appeals for the Fourth Circuit.

L. H. HYER, Appellant.

vs.

RICHMOND TRACTION COMPANY *et al.*, Appellees. }

Stipulation.

It is hereby stipulated by and between the attorneys of record for the respective parties in the above-entitled cause that the certified transcript of the record of said cause, filed in the clerk's office of the Supreme Court of the United States on the 22nd day of May, 1897, with the petition of the appellant for a writ of certiorari, after the correction of the last paragraph of the dissenting opinion of Judge Brawley, as shewn in the certified copy of the corrected opinion hereto annexed, which correction the clerk of the said Supreme Court is hereby authorized to make in the said certified transcript,

shall be received and considered as the transcript of the record on the return to the writ of certiorari granted by the said Supreme Court on the 25th day of May, 1897.

(Signed)

STILES & HOLLADAY,

Attorneys for the Appellant.

(Signed)

HENRY & WILLIAMS,

Attorneys for the Appellees.

May 28, 1897.

I do certify that the foregoing is a true copy of the original stipulation filed and now remaining of record in the above-entitled cause.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals on this 28th day of May, A. D. 1897.

Seal United States Circuit Court of Appeals, Fourth Circuit.

HENRY T. MELONEY,

Clerk U. S. Cir. Ct. Appeals.

(Here followed certified copy of dissenting opinion, which is omitted in printing here, as it already appears at page 142 of this Record.)

166 UNITED STATES OF AMERICA :

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do make return of the annexed writ of certiorari, issued out of the Supreme Court of the United States in the cause therein entitled, on the 25th day of May, 1897, by annexing hereto a certified copy of the stipulation of the attorneys of record that the certified transcript of the record of said cause, filed in the clerk's office of the Supreme Court with the petition for the said writ of certiorari, shall be received and considered as the transcript of the record on the return to the said writ of certiorari.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals on this 28th day of May, A. D. 1897.

Seal United States Circuit Court of Appeals, Fourth Circuit.

HENRY T. MELONEY,

Clerk U. S. Cir. Court of Appeals, Fourth Circuit.

167 [Endorsed:] Case No. 16,592. Supreme Court U. S., October term, 1897. Term No., 379. L. H. Hyer, petitioner, vs. Richmond Traction Co. et al. Writ of certiorari and return. Filed June 15, 1897.

